



---

Wednesday  
February 3, 1999

---

**Part II**

**Department of  
Commerce**

---

**Economic Development Administration**

---

**13 CFR Chapter III**

**Economic Development Administration  
Regulations; Revision To Implement the  
Economic Development Reform Act of  
1998; Interim Rule**

**DEPARTMENT OF COMMERCE****Economic Development Administration****13 CFR Chapter III**

[Docket No. 990106003-9003-01]

RIN 0610-AA56

**Economic Development Administration Regulations; Revision To Implement the Economic Development Reform Act of 1998**

**AGENCY:** Economic Development Administration (EDA), Department of Commerce (DoC).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The purpose of this interim-final rule is to revise regulations of the Economic Development Administration (EDA) to implement the comprehensive amendment to the Public Works and Economic Development Act of 1965, as amended, by the Economic Development Administration Reform Act of 1998 (Pub. L. 105-393).

**DATES:** Effective date: February 11, 1999.  
*Comment date:* Comments are due on or before April 5, 1999.

**ADDRESSES:** Send comments to Edward M. Levin, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW, Room 7005, Washington, DC 20230

**FOR FURTHER INFORMATION CONTACT:** Edward M. Levin, Chief Counsel, Telephone Number 202-482-4687, fax 202-482-5671, and e-mail ELevin@doc.gov.

**SUPPLEMENTARY INFORMATION:****Background**

The Economic Development Administration (EDA) was reauthorized for a five-year period by legislation enacted on November 13, 1998. Congress had not authorized the agency since 1982. This legislative accomplishment will create stability and opportunities for EDA to better serve economically distressed communities across the country.

EDA continues to take steps toward improving its program delivery, policies and procedures, and to be more responsive to those whom it serves. In

step with the National Performance Review and Paperwork Reduction Act, EDA had completely revised its regulations, thereby creating fewer burdens on and making them more accessible to the public. This interim-final rule continues EDA's efforts in this regard.

**Description of Major Changes**

This interim-final rule removes, adds, redesignates and revises parts and sections of EDA's regulations at 13 CFR Chapter III to implement Pub. L. 105-393 and to continue the streamlining and plain language initiatives of this administration. Significant changes are described below.

**Removals of Parts and Sections**

Certain parts and sections have been removed because the programs to which these regulations apply were deleted by Pub. L. 105-393 as follows: Part 302 Economic Development Districts, Subpart B—Standards for Designation, Modification, and Termination of Economic Development Centers and Subpart C, Financial and Other Assistance to Economic Development Centers and Districts; part 312, Supplemental and Basic Assistance Under Section 304 of the Act; references to and requirements under the Public Works Impact Program in parts 301 and 305 and § 316.3; § 305.10 Construction cost increases; § 316.2 Certification as to waste treatment, and § 316.5 Electric and gas facilities.

Other parts and sections were removed to streamline and simplify the rules such as: § 302.1 Authorization of Economic Development Districts, and § 305.12 Variance in cost of grant projects.

**New Parts and Sections**

New parts and sections have been added to implement Pub. L. 105-393 as follows: Pursuant to sec. 302 of Pub. L. 105-393, new language has been added in §§ 301.3, 305.3 and 308.5 on requirements for strategies for public works and economic adjustment projects (except for planning); pursuant to sec. 601 of Pub. L. 105-393, with EDA's prior written approval EDA may release its grant related property interests 20 years after the grant award, and § 314.11(b) releases all real and personal property in projects funded under Pub. L. 94-369, as amended by

Pub. L. 95-28. Other sections have been added in light of new provisions in Pub. L. 105-393, such as § 316.13 Economic development information clearinghouse, § 316.17 Acceptance of certifications by applicants, and § 316.18 Reports by recipients, and part 318 Evaluations of Economic Development Districts and University Centers.

New parts of sections have been added for other reasons, for example, § 314.3(c) defines "adequate consideration" to distinguish it from fair market value; and § 314.7(c) provides exceptions to the title requirement when for example, a railroad or state or local highway is part of the EDA funded project.

**Significant Revisions**

Part 301—Designation of Areas has been substantially rewritten because under Pub. L. 105-393 areas designated by EDA prior to the effective date of Pub. L. 105-393 will no longer be so designated and areas thereafter will be determined on a project by project basis (for public works and economic adjustment projects, except for planning activities); and § 316.2 has been redesignated and substantially changed to more accurately reflect statutory intent and practices and procedures for determining if a project would result in excess capacity.

Other significant changes—Grant rates have been modified at § 301.4 to cover all EDA grants (not just public works awards) and to reflect changed unemployment conditions; and § 308.3 has been changed to revise area criteria for economic adjustment projects to emphasize unique economic adjustment tools.

**Note**

- EDA has recently established a task force to examine its Revolving Loan Fund (RLF) program as described in part 308 of these rules. The results of this task force may lead to changes in EDA's RLF program.

- An interest rate buy down program (see § 308.3), is being considered under EDA's Economic Adjustment program. Suggestions on structuring and implementing such a program are welcome.

- As part of the economic development clearinghouse described in § 316.14, EDA's Office of Economic Development Information is accessible on the internet web sites at <http://www.doc.gov/eda> and <http://netsite.esa.doc.gov/oeci>.

TABLE OF CHANGES

Old section	New section	Description of change
§ 300.1 .....	§ 300.1 .....	Renamed and changed for Plain Language purposes.

## TABLE OF CHANGES—Continued

Old section	New section	Description of change
Part 301—Designation of areas .....	Part 301—General eligibility and grant rate requirements.	Renamed.
§§ 301.1–301.16 .....	.....	Removed since under Pub. L. 105–393 there is no longer area designation except on a project-by-project basis.
.....	§§ 301.1–301.4 .....	New §§ include information and requirements about applicants, area eligibility, strategy required and grant rates.
§ 302.1 .....	.....	Removed.
§ 302.2 .....	§ 302.1 .....	Redesignated and modified for Plain Language purposes.
§ 302.3 .....	§ 302.2 .....	Redesignated and modified for Plain Language purposes.
§ 302.4 .....	§ 302.3 .....	Redesignated and modified for Plain Language purposes.
§ 302.5 .....	§ 302.4 .....	Redesignated and modified for Plain Language purposes.
§ 302.6 .....	§ 302.4 .....	Made part of this new section.
§ 302.7 .....	§ 302.5 .....	Redesignated and streamlined.
§ 302.8 .....	§ 302.6 .....	Redesignated, modified and streamlined.
§ 302.9 .....	§ 301.4(d) .....	Redesignated, terminology modified, and portions removed since Economic Development Centers are no longer part of PWEDA
.....	.....	New under Pub. L. 105–393.
§§ 302.10–302.19 .....	§ 302.7 .....	Removed since Economic Development Centers are no longer part of PWEDA.
Part 303—Overall Economic Development Program.	Part 303—Planning Process and Strategies for District and Other Planning Organizations Supported by EDA.	Renamed.
§ 303.1 .....	§ 303.1 .....	Renamed and modified to add definitions and streamlined.
§§ 303.2, 303.3 .....	.....	Removed.
§§ 303.4, 303.5, 303.6 .....	§§ 303.2, 303.3 .....	Renamed and revised for Plain Language purposes and consistent with Pub. L. 105–393.
§ 304.1 .....	§§ 304.1, 304.2 .....	Renamed and revised to make more accessible to reader.
§ 304.2 .....	§§ 307.11, 307.14 .....	Renamed and redesignated to implement Pub. L. 105–393.
Part 305—Public Works and Development Facilities Program.	.....	Part 305—Grants for Public Works and Development Facilities Renamed.
§ 305.2 .....	§ 300.2 .....	Renamed and applicable to all programs.
.....	§ 305.3 .....	Application requirements.
§§ 305.3, 305.4 .....	§ 305.2 .....	Renamed, merged and modified to implement Pub. L. 105–393.
.....	.....	Renamed, combined and modified to implement Pub. L. 105–393.
§§ 305.5, 305.6 .....	§ 305.4 .....	Removed.
§ 305.7 .....	.....	Renamed and applicable to all programs.
§§ 305.8, 305.9 .....	§ 301.4 .....	Removed.
§ 305.10 .....	.....	Redesignated and revised to make more accessible to reader.
§ 305.11 .....	§ 305.5 .....	Removed.
.....	.....	Redesignated.
§ 305.12 .....	§ 305.6 .....	Added for guidelines and reports.
§ 305.13 .....	§ 305.7 .....	Renamed and revised under Pub. L. 105–393 and for Plain Language purposes.
Part 306 [Reserved]; Part 307—Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Research and Evaluation and Planning—Subpart E—Economic Development Districts American Indian Tribes and Redevelopment Areas Economic Development Planning Grants and Subpart F—State and Urban Development Planning Grants.	Part 306—Planning Assistance .....	.....
Part 307—Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Research and Evaluation and Planning.	Part 307—Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Training, Research and Evaluation.	Renamed consistent with Pub. L. 105–393.
§ 307.2 .....	§ 300.2 .....	Redesignated to apply to all programs and this program in particular.
§§ 307.3, 307.4 .....	§ 307.2 .....	Renamed, merged and revised to make more accessible to reader.

## TABLE OF CHANGES—Continued

Old section	New section	Description of change
§ 307.5 .....	§ 307.3 .....	Renamed, redesignated and revised to make more accessible to reader and in accordance with Pub. L. 105-393.
§ 307.6 .....	§ 307.4 .....	Redesignated.
§ 307.7 .....	§ 300.2 .....	Redesignated to apply to all programs and this program in particular.
§§ 307.8, 307.9 .....	§ 307.5 .....	Renamed, merged and revised to make more accessible to reader.
§ 307.10 .....	§ 307.6 .....	Renamed, redesignated and revised to make more accessible to reader and in accordance with Pub. L. 105-393.
Subpart C—National Technical Assistance, Subpart D—Research and Evaluation.	Subpart C—National Technical Assistance, Training, Research, and Evaluation.	Renamed, merged and redesignated to be consistent with Pub. L. 105-393.
§§ 307.11, 307.16 .....	§ 307.7 .....	Redesignated, merged and revised to make more accessible to reader.
§§ 307.12, 307.17 .....	§ 300.2 .....	Renamed and merged as applicable to all programs and to this program in particular.
§§ 307.13, 307.14, 307.18, 307.19 .....	§ 307.8 .....	Renamed, merged and revised to make more accessible to reader.
§§ 307.15, 307.21 .....	§ 307.9 .....	Renamed, revised and modified for Plain Language purposes.
§ 307.20 .....		Removed—will be in Notice(s) of Funding Availability—Request for Proposals.
§§ 307.22 .....	§ 306.1 .....	Redesignated, merged and revised consistent with Pub. L. 105-393.
§ 307.23 .....		Removed.
§§ 307.24, 307.30 .....	§ 300.2 .....	Applicable to all programs.
§§ 307.25, 307.26, 307.31, 307.32 .....	§ 306.2 .....	Renamed, merged, streamlined and modified for Plain Language purposes.
§§ 307.27, 307.33 .....	§§ 306.3, 306.4 .....	Redesignated and made consistent with Pub. L. 105-393.
§ 307.28 .....	§ 302.3 .....	Part of new provision on District Organizations.
Part 308—Requirements for Grants Under the Title IX Economic Adjustment Program.	Part 308—Requirements for Economic Adjust- ment Grants.	Renamed consistent with Pub. L. 105-393.
§ 308.2 .....	§ 308.3 .....	Renamed and revised to make more accessible to reader.
§ 308.3 .....	§§ 308.5, 300.2 .....	Renamed and revised to be more accessible to readers and applicable to all programs.
§ 308.4 .....	§ 308.2 .....	Renamed and revised for consistency with Pub. L. 105-393.
§§ 308.5, 308.6 .....	§ 308.4 .....	Renamed, merged and modified to implement Pub. L. 105-393 and to be more accessible to readers.
§ 308.7 .....	§ 308.6 .....	Renamed and streamlined.
Part 312—Supplemental and Basic Assistance Under.	Section 304 of the Act .....	Removed as no longer in effect.
Part 314—Property .....	Part 314—Property Management Standards ...	Renamed.
§ 314.9 .....	§ 314.9 .....	Renamed and expanded to refer to title requirements.
	Subpart D—Release of EDA's Property Inter- est.	Added to implement provision of Pub. L. 105-393 and to clarify EDA's property release requirements.
§ 316.2 .....		Removed as no longer in effect.
§ 316.3 .....	§ 316.2 .....	Redesignated and clarified.
§ 316.4 .....	§ 316.3 .....	Redesignated.
§ 316.5 .....		Removed as no longer in effect.
§ 316.6 .....	§ 316.4 .....	Redesignated.
§ 316.7 .....	§ 316.5 .....	Redesignated.
§ 316.8 .....	§ 316.6 .....	Redesignated.
§ 316.9 .....	§ 316.7 .....	Redesignated.
§ 316.10 .....	§ 316.8 .....	Redesignated and clarified.
§ 316.11 .....	§ 316.9 .....	Redesignated.
§ 316.12 .....		Removed as included in § 316.8.
§ 316.13 .....	§ 316.10 .....	Renamed and modified.
	§§ 316.11-316.18 .....	Added to implement provisions of Pub. L. 105-393.
	§ 316.19 .....	Added to replace current procedures and requirements.
	Part 318—Evaluations of Economic Develop- ment Districts and University Centers.	Added to implement provisions of Pub. L. 105-393.

**Savings Clause**

The rights, duties, and obligations of all the parties pursuant to parts, sections and portions thereof of the Code of Federal Regulations removed by this rule shall continue in effect, except that EDA may waive administrative or procedural requirements of provisions removed by this rule.

**Executive Orders 12866 and 12875**

This rule has been determined to be significant for the purposes of E.O. 12866, Regulatory Planning and Review. In addition, it has been determined that, consistent with the requirements of E.O. 12875, Enhancing Intergovernmental Partnership, this interim final rule will not impose any unfunded mandates upon State, local, and tribal governments.

**Notice and Comment**

This rule is not subject to the rulemaking requirements of 5 U.S.C. 553 because it relates to public property, loans, grants, benefits, and contracts, 5 U.S.C. 553(c)(2), including the provision of prior notice and an opportunity for public comment and delayed effective date.

No other law requires that notice and opportunity for comments be given for this rule.

However, because the Department is interested in receiving comments from those who will benefit from the amendments, this rule is being issued as interim final. Public comments on the interim final rule are invited and should be sent to the address or numbers listed in the ADDRESSES and FOR FURTHER INFORMATION CONTACT sections above. Comments received by April 5, 1999 will be considered in promulgating a final rule.

**Note:** EDA is particularly interested in comments relating to its use of Plain Language in order to make these requirements more readily accessible to the public.

**Regulatory Flexibility Act**

Since notice and an opportunity for comment are not required to be given for the rule under 5 U.S.C. 553 or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 601-612) no initial or final Regulatory Flexibility Analysis is required, and none has been prepared.

**Paperwork Reduction Act**

This regulation imposes new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), as amended, but has been cleared under OMB's Emergency Clearances process

under OMB approval numbers: 0610-0093; 0610-0094; 0610-0095; 0610-0096 and will expire on July 31, 1999. To remain effective after such expiration date, EDA must receive OMB's final clearance and display a currently valid OMB control number. If such final clearance is not obtained after the expiration date of the Emergency Clearance so that a currently valid OMB control number is not displayed, applicants and recipients will not thereafter be required to submit information requested pursuant to this rule.

The information is needed to determine eligibility of those applicants and projects and to monitor projects for compliance with EDA's construction or Revolving Loan Fund requirements, as applicable. EDA then uses information obtained in these collections to help carry out its mission to aid economically distressed areas of the Nation. Responses to requests for information are necessary under Pub. Law 105-393 for obtaining and for keeping benefits. The reporting burden for this collection is estimated to be approximately 7 burden hours for the Proposal; approximately 50 burden hours for the Application; approximately 18 burden hours for Requirements for Approved Construction Projects; approximately 240 burden hours for the CED Strategy Guidelines; and approximately 76 burden hours for the series of Guidelines for the Revolving Loan program, including the time for gathering and maintaining the data needed for completing and reviewing the collection of information. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments regarding these burden estimates or any other aspects of the collection of information, including suggestions for reducing the burdens, should be forwarded to Edward M. Levin, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW, Room 7005, Washington,

DC 20230 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention EDA Desk Officer).

**Administrative Procedure Act and Regulatory Flexibility Act**

*Executive Order 12612 (Federalism Assessment)*

This action has been reviewed in accordance with the principles and criteria contained in E.O. 12612. It has been determined that this interim final rule does not have significant Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in E.O. 12612.

**List of Subjects**

*13 CFR Part 300*

Reporting and recordkeeping requirements; Non-profit organizations; American Indians.

*13 CFR Part 301*

Grant Programs; Community Development; American Indians.

*13 CFR Part 302*

Community Development; Grant programs-community development; Technical assistance.

*13 CFR Part 303*

Community Development; Grant programs-community development.

*13 CFR Part 304*

Selection and evaluation.

*13 CFR Part 305*

Community development; Community facilities; Grant programs-community development.

*13 CFR Part 306*

Community development; Grant programs-community development.

*13 CFR Part 307*

Business and industry; Community development; Community facilities; Grant programs-business; Grant programs-community development; Research; Technical Assistance.

*13 CFR Part 308*

Business and industry; Community development; Community facilities; Grant programs-business; Grant programs-community development; American Indians; Manpower training programs; Mortgages; Research; Technical assistance.

**13 CFR Part 314**

Community development; Grant programs-community development.

**13 CFR Part 315**

Administrative practice and procedure; Community development; Grant programs-business; Technical assistance; Trade adjustment assistance.

**13 CFR Part 316**

Community development; Grant programs-community development; Freedom of Information; Uniform Relocation Act; Loan programs-business; Loan programs-community development; Environmental protection; Record retention; Records.

**13 CFR Part 317**

Civil rights; sex discrimination.

**13 CFR Part 318**

Colleges and universities.

For the reasons set forth in the preamble, 13 CFR Chapter III is revised to read as follows:

# **CHAPTER III—DEPARTMENT OF COMMERCE, ECONOMIC DEVELOPMENT ADMINISTRATION**

**Part**

- 300 General Information.
- 301 General Eligibility and Grant Rate Requirements.
- 302 Economic Development Districts; standards for designation, modification and termination.
- 303 Planning Process and Strategies for District and Other Planning Organizations Supported by EDA.
- 304 General Selection Process and Evaluation Criteria.
- 305 Grants for Public Works and Development Facilities.
- 306 Planning Assistance.
- 307 Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Training, Research, and Evaluation.
- 308 Requirements for Economic Adjustment Grants.
- 309–313 [Reserved].
- 314 Property.
- 315 Certification and Adjustment Assistance for Firms.
- 316 General Requirements for Financial Assistance.
- 317 Civil Rights.
- 318 Evaluations of University Centers and Economic Development Districts.

**PART 300—GENERAL INFORMATION****Sec.**

- 300.1 Introduction and purpose.
- 300.2 Definitions.
- 300.3 OMB control numbers.
- 300.4 Economic Development Administration—Washington, DC, Regional and Economic Development Representatives.

**Authority:** 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

**§ 300.1 Introduction and Purpose.**

(a) *Introduction.* Is your community suffering from severe economic distress (e.g., high unemployment, low income, sudden economic changes, etc.)? Are you a representative of a State or local unit of government, Indian tribe, public or private nonprofit organization, educational institution, or community development corporation looking for grant assistance to enhance your opportunities for economic development? If so, these regulations of the Economic Development Administration (EDA) of the U.S. Department of Commerce may be of help. These regulations tell you the purpose of EDA and outline the program requirements, project selection process, project evaluation criteria, and other relevant matters. The information in these regulations covers grant programs of EDA that provide financial awards for the following:

- Public Works and Development Facilities;
- Planning;
- Research, Evaluation, Training and Technical Assistance;
- Trade Adjustment Assistance; and
- Economic Adjustment Assistance.

(b) What is the Purpose of the Economic Development Administration?

(1) Many communities lag behind and suffer economic distress in one form or another, such as:

- High unemployment;
- Low income;
- Underemployment;
- Outmigration;
- Sudden economic changes due to the restructuring or relocation of industrial firms;
- Closing or realignment of defense bases or cutbacks in defense procurement;
- Economic impact of natural disasters or other emergencies;
- Actions of the Federal government (such as environmental requirements) that curtail or remove economic activities; and
- Impacts of foreign trade.

(2) The purpose of the Economic Development Administration is to address economic problems affecting economically distressed rural and urban communities; by helping them:

- (i) Develop and strengthen their economic development planning and institutional capacity to design and implement business outreach and development programs; and
  - (ii) Develop or expand public works and other facilities, financing tools, and resources that will create new job opportunities, save existing jobs, retain existing businesses, and support the development of new businesses.
- (3) To promote a strong and growing economy throughout the United States,

EDA works in partnership with State and local governments, Indian tribes and local, regional, and State public and private nonprofit organizations. With them EDA develops and carries out comprehensive economic development strategies that address the economic problems of distressed communities. EDA helps such communities increase their economic development capacities so that they can take advantage of existing resources and development opportunities.

**§ 300.2 Definitions.**

Unless otherwise defined in other parts or sections of this Chapter, the terms listed are defined as follows:

*Comprehensive Economic Development Strategy, CED Strategy, or strategy* means a strategy approved by EDA under § 301.3 of these regulations.

*Department* means the Department of Commerce.

*Economic Development District or district:*

(1) Means any area in the United States that has been designated by EDA as an Economic Development District under § 302.1 of these regulations; and

(2) Includes any Economic Development District designated by EDA under sec. 403 of the Public Works and Economic Development Act of 1965, as amended, as in effect on the day before the effective date of Public Law 105–393.

*EDA* means the Economic Development Administration in the U.S. Department of Commerce when a place or agency is intended, and refers to the headquarters office in Washington, D.C., or a regional office, as appropriate; or it means the Assistant Secretary of Commerce for Economic Development or his/her designee when a person is intended. The locations of EDA's offices are listed each year in a Notice of Funding Availability (NOFA). The general information telephone number for EDA is (202) 482–2309.

*Eligible applicant* means:

- (1) In general,—
- (i) An entity qualified to be an eligible recipient, or
- (ii) Its authorized representative.
- (2) Except in the case of Research, Evaluation, Training, or Technical Assistance grants under part 307, a private individual or for-profit organization cannot be an eligible applicant.

*Eligible recipient* means

- (1) In general,—
- (i) An area described in § 301.2 of these regulations;
- (ii) An Economic Development District;
- (iii) An Indian tribe or a consortium of Indian tribes;

- (iv) A State;
- (v) A city or other political subdivision of a State or a consortium of political subdivisions;
- (vi) An institution of higher education or a consortium of institutions of higher education; or
- (vii) A public or private nonprofit organization or association acting in cooperation with officials of a political subdivision of a State.

(2) In the case of Research, Evaluation, Training, and Technical Assistance grants under part 307, eligible recipient also includes private individuals and for-profit organizations.

**Federal agency** means a department, agency, or instrumentality of the United States.

**Financial assistance** means grant.

**Grant** means the non-procurement award of EDA funds to an eligible recipient under PWEDA or the Trade Act, as applicable. The term includes a cooperative agreement, within the meaning of chapter 63 of title 31, United States Code.

**Indian tribe** means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native Village or Regional Corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The term includes: The governing body of a tribe, nonprofit Indian corporation (restricted to Indians), Indian authority, or other nonprofit tribal organization or entity, provided that the tribal organization or entity is wholly owned by, and established for the benefit of, the tribe or Alaska Native Village.

**Local share, matching share or local share match** are used interchangeably to mean non-Federal funds or goods and services provided by recipients or third parties that are required as a condition of a grant, and includes funds from other Federal agencies only if there is statutory authority allowing such use.

**Notice of Funding Availability or NOFA**, refers to the notice or notices EDA publishes each year in the **Federal Register** and on EDA's internet web site, <http://www.doc.gov/eda>, describing the available amounts, particular procedures, priorities, and special circumstances for the EDA grant programs for that year.

**OEDP** (Overall Economic Development Program), as the term is used in part 317 (Civil Rights) of this chapter, means CED Strategy developed in accordance with part 303 of this chapter.

**PWEDA** means the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89-136, 42 U.S.C. 3121 *et seq.*), including the comprehensive amendments by the Economic Development Administration Reform Act of 1998 (Pub. L. 105-393). (The term "PWEDA" was used to refer to EDA's authorizing legislation as it was in effect before the effective date of Public Law 105-393, signed into law on November 13, 1998. In these regulations, the term "PWEDA" refers to the legislation as currently amended by the 1998 law.)

**Project** means the activity or activities the purpose of which fulfills EDA program requirements and that EDA funds in whole or in part.

**Proposed District** means a geographic entity composed of one or more eligible areas proposed for designation as an Economic Development District.

**Recipient and grantee** are used interchangeably to mean an entity receiving funds from EDA under PWEDA or the Trade Act, as applicable, and includes any EDA approved successor to such recipient.

**State** means a State, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

**The Trade Act** means Title II, Chapters 3 and 5, of the Trade Act of 1974, as amended (19 U.S.C. 2341, *et seq.*).

**United States** means all of the States.

#### § 300.3 OMB Control Numbers.

(a) This table displays control numbers assigned to EDA's information collection requirements by the Office of Management and Budget ("OMB") pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. EDA intends that this table comply with Section 3507(f) of the Paperwork Reduction Act, requiring agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) Control Number Table:

13 CFR part or section where identified and described	Current OMB control No.
301 .....	0610-0094.
302 .....	0610-0094.
303 .....	0610-0093.
304 .....	0610-0094.
305 .....	0610-0094 and 0610-0096.
306 .....	0610-0094.

13 CFR part or section where identified and described	Current OMB control No.
307 .....	0610-0094.
308 .....	0610-0094 and 0610-0095.
314 .....	0610-0094.
315 .....	0610-0094.
316 .....	0610-0094.

#### § 300.4 Economic Development Administration-Washington, D.C., Regional and Economic Development Representatives.

For addresses and phone numbers of the Economic Development Administration in Washington, D.C., Regional and Field Offices and Economic Development Representatives, refer to EDA's annual Fiscal Year (FY) Notice of Funding Availability (NOFA).

#### PART 301—GENERAL ELIGIBILITY AND GRANT RATE REQUIREMENTS

Sec.

- 301.1 Applicants.
- 301.2 Area eligibility.
- 301.3 Strategy required.
- 301.4 Grant rates.

**Authority:** 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

##### § 301.1 Applicants.

(a) Eligible applicants are defined in § 300.2 of this chapter.

(b) Except as otherwise provided in part 307, a public or private nonprofit organization applicant must include in its application for assistance, a resolution passed by, or a letter signed by an authorized representative of, a political subdivision of a State or an Indian tribe, acknowledging that the applicant is acting in cooperation with officials of the political subdivision or Indian tribe, as applicable.

##### § 301.2 Area eligibility.

(a) EDA awards public works and development facilities grants under part 305 and economic adjustment grants under part 308 for projects to enhance economic development in economically distressed areas.

(b) An area is eligible for a project grant under part 305 or 308 if it has one of the following:

(1) An unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average unemployment rate. For example, if the national average unemployment rate is 6 percent, an area is eligible under this provision if it has an unemployment rate of 7 percent.

(2) Per capita income that is, for the most recent period for which data are

available, 80 percent or less of the national average per capita income.

(3) A special need, as determined by EDA, arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions, for example:

- (i) Substantial outmigration or population loss;
- (ii) Underemployment, that is, employment of workers at less than full time or at less skilled tasks than their training or abilities permit;
- (iii) Military base closures or realignments, defense contractor reductions-in-force, or Department of Energy defense-related funding reductions;
- (iv) Natural or other major disasters or emergencies;
- (v) Extraordinary depletion of natural resources;
- (vi) Closure or restructuring of industrial firms, essential to area economies; or
- (vii) Destructive impacts of foreign trade.

(c) A non-distressed area [i.e., an area that does not meet the criteria of paragraph (b) of this section] within an Economic Development District is also eligible, provided the project will be of a substantial direct benefit to an area that meets at least one of the criteria of paragraph (b) of this section. A project provides substantial direct benefit if it provides significant employment opportunities for unemployed, underemployed or low income residents.

(d) Normally an area is defined by geographical/political boundaries, e.g., city, county, Indian reservation. However, a smaller area (without regard to political boundaries) is also eligible even though it may be part of a larger community that overall is experiencing low distress. When the boundaries of the project area differ from established political boundaries, the project area must be of sufficient size appropriate to the proposed project, and the applicant must justify the proposed boundaries in relation to the project's benefits to the area.

(e) Eligibility is determined at the time that EDA receives an application and is based on the most recent Federal data available for the area where the

project will be located or where the substantial direct benefits will be received. If no Federal data are available to determine eligibility, an applicant must submit to EDA the most recent data available through the government of the State in which the area is located.

(f) EDA may reject any documentation of eligibility that it determines is inaccurate.

(g) There is no area eligibility requirement for a project grant under part 306 or 307.

(h) EDA will describe special needs criteria under paragraph (b)(3) of this section in a NOFA.

#### § 301.3 Strategy Required.

(a) To be eligible for a project grant under part 305 or 308, the application for assistance must include a CED Strategy acceptable to EDA. The applicant may, however, incorporate by reference a current strategy previously approved by EDA, as an alternative to including the strategy in the application. (Exception: A strategy is not required when a funding request is for planning assistance, i.e., a strategy grant, under part 308.) The strategy must:

- (1) Be the result of a continuing economic development planning process;
- (2) Identify the economic development problems to be addressed using the assistance;
- (3) Identify past, present, and projected future economic development investments in the area receiving the assistance;
- (4) Identify the public and private participants in the investments and the sources of the funding for them;
- (5) Describe how the problems identified under paragraph (a) (2) of this section will be addressed, in a manner that promotes economic development and opportunity, fosters effective transportation access, enhances and protects the environment, and balances resources through sound management of development; and
- (6) Describe how the activities described under paragraph (a) (5) of this section will contribute to the solution of the problems.

(b) EDA will approve as acceptable a strategy that it determines meets the requirements of paragraph (a) of this

section. The strategy may be one developed:

- (1) With EDA assistance,
- (2) Under another Federally supported program, or
- (3) Through a local, regional, or State process.

(c) In determining acceptability of a strategy, EDA will take into consideration the circumstances of the application, so that for instance a strategy accompanying an application for assistance immediately following a natural disaster will require less depth and detail than would be the case in other circumstances.

(d) To be acceptable, a strategy must be approved by the applicant's governing body within one year prior to the date of application.

#### § 301.4 Grant Rates.

(a) Except as otherwise provided for in this chapter, the amount of the EDA grant may not exceed 50 percent of the cost of the project. Cash or in-kind contributions, fairly evaluated by EDA, including contributions of space, equipment, and services, may provide the non-Federal share of the project cost. In-kind contributions must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements.

(b) EDA may supplement the Federal share of a grant project where the applicant is able to demonstrate that the non-Federal share that would otherwise be required cannot be provided because of the overall economic situation. It is not necessary for an applicant to prove that it would be impossible to provide a full 50 percent non-Federal share, but it must show circumstances warranting any reduction. In determining whether to provide a Federal share greater than 50 percent for a project, EDA will give due consideration to the applicant's economic situation and the relative needs of the area. In the case of Indian tribes, EDA may reduce or waive the non-Federal share, and in other cases EDA may reduce the non-Federal share of the cost of the project below 50 percent, in accordance with the following table, showing the maximum Federal grant rate, including the supplement:

Projects	Maximum grant rates (percentage)
Projects of Indian tribes where EDA has made a determination to waive the non-Federal share of the cost of the project .....	100
Projects located in Federally-declared disaster areas for which EDA receives an application for assistance within one year of the date of declaration, and for which the President established a rate of Federal participation, based on the public assistance grant rate of the Federal Emergency Management Agency (FEMA) for the disaster, of greater than 80 percent .....	100
Projects of Indian tribes where EDA has made a determination to reduce the non-Federal share of the cost of the project .....	(1)



Projects	Maximum grant rates (percentage)
Projects of States or political subdivisions of States that have exhausted their effective taxing and/or borrowing capacity, or non-profit organizations that have exhausted their borrowing capacity .....	( <sup>1</sup> )
Projects located in Federally-declared disaster areas for which EDA receives an application for assistance within one year of the date of declaration, unless the applicant or the area is otherwise eligible for a higher rate of Federal participation under another provision of this section .....	80
Projects located in eligible areas where: (1) the 24-month unemployment rate is at least 11 percent and is at least 225% of the national average or (2) the per capita income (PCI) is not more than 50% of the national average .....	80
Projects located in eligible areas that are not eligible for a higher rate, where: (1) the 24-month unemployment rate is at least 9 percent and is at least 180% of the national average or (2) the PCI is not more than 60% of the national average .....	70
Projects located in eligible areas that are not eligible for a higher rate, where: (1) the 24-month unemployment rate is at least 7.5 percent and is at least 150% of the national average or (2) the PCI is not more than 70% of the national average .....	60
Projects in all other eligible areas .....	50

<sup>1</sup> Less than 100.

(c) Projects under part 306 or 307 are eligible for maximum grant rates as provided in those parts.

(d) Projects located in designated Economic Development Districts are eligible for an amount of additional Federal grant assistance not to exceed 10 percent of the estimated cost of the project, provided

(1) The project applicant is actively participating in the economic development activities of the district;

(2) The project is consistent with the strategy of the district; and

(3) The non-Federal share of the project is not less than 20 percent.

(e) EDA may make grants to supplement grants awarded in other Federal grant programs.

(1) Supplemental grants under paragraph (e) of this section are only available for projects:

(i) Under Federal grant programs that

(A) Provide assistance in the construction or equipping of public works, public service, or development facilities, and

(B) Are designated by EDA as eligible for supplemental EDA grants, and

(ii) Are consistent with a strategy.

(2) EDA's funds combined with funds from another Federal grant program may be at the maximum EDA grant rate, as set forth above, even if the other Federal program has a lower grant rate. If the other Federal program has a grant rate higher than the maximum EDA grant rate as set forth above, the combination of funds may exceed the EDA rate provided the EDA share does not exceed the EDA rate.

(f) An applicant is eligible for the highest applicable maximum grant rate, as set forth above, in effect between the time EDA invites the application and the time the project is approved. The Federal share of a project receiving EDA grant assistance may be (and often is) less than the maximum grant rate for which the recipient is eligible.

(g) EDA's NOFA will provide additional criteria to ensure that the level of economic distress of an area, rather than a preference for a geographic area or a specific type of economic distress, is the primary factor in allocating assistance.

#### **PART 302—ECONOMIC DEVELOPMENT DISTRICTS; STANDARDS FOR DESIGNATION, MODIFICATION AND TERMINATION**

Sec.

302.1 Designation of economic development districts.

302.2 Designation of nonfunded districts.

302.3 District organizations.

302.4 District organization functions and responsibilities.

302.5 Modification of district boundaries.

302.6 Termination and suspension of district designation.

302.7 Eligibility of non-distressed areas.

**Authority:** 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

##### **§ 302.1 Designation of Economic Development Districts.**

EDA will designate a proposed district as an Economic Development District with the concurrence of the State or States in which the District will be wholly or partially located, when the proposed district meets the following requirements:

(a) It is of sufficient size or population, and contains sufficient resources, to foster economic development on a scale involving more than a single eligible area;

(b) It has an EDA approved strategy which:

(1) Contains a specific program for intra-district cooperation, self-help, and public investment;

(2) Is approved by each affected State;

(3) Identifies problems, and conditions underlying economic distress in the district; and

(4) Promotes economic development opportunities, plans for transportation access, enhancement and protection of

the environment and balances resources through sound management of development;

(c) It contains at least one area, eligible for assistance under § 301.2, that has been identified in an approved strategy;

(d) At least a majority of the counties, or other areas as determined by EDA, within the proposed district boundaries have submitted documentation of their commitment to support the economic development activities of the district;

(e) A district organization has been established in the proposed district which meets the requirements of § 302.4; and

(f) The proposed district organization requests such designation.

##### **§ 302.2 Designation of nonfunded districts.**

The continuing designation of any Economic Development District is subject to the criteria and organization requirements of this part whether or not the Economic Development District organization receives any EDA financial assistance.

##### **§ 302.3 District organizations.**

(a) The district shall be organized in one of the following ways:

(1) As a public organization through an intergovernmental agreement for the joint exercise of local government powers; or

(2) As a public organization established under State enabling legislation for the creation of multi-jurisdictional area wide planning organizations; or

(3) As a non-profit organization incorporated under the laws of the State in which it is located.

(b) Each district organization must meet EDA requirements concerning membership composition [§ 302.3(c)], the maintenance of adequate staff support to perform its economic development functions [§ 302.3(d)], and its authorities and responsibilities for

carrying out economic development functions [§ 302.4]. Such requirements must also be met by the board of directors (or other governing body of the organization) as a whole.

(c) The district organization shall demonstrate that its governing body meets all of the following requirements:

(1) It is broadly representative of the principal economic interests of the district area including the interests of its minority and low-income populations;

(2) There is at least a simple majority of its membership who are elected officials and/or employees of a general purpose unit of local government who have been appointed to represent the government; and

(3) At least 20 percent of its membership who are private citizens, i.e., neither elected officials of a general purpose unit of local government nor employees of such a government who have been appointed to represent that government.

(d) The district organization shall be assisted by a professional staff drawn from qualified persons in economic development, planning or related disciplines. EDA may provide planning grants to Economic Development Districts to employ professional staff in accordance with part 306 of this chapter.

(e) The governing bodies of district organizations shall provide access for persons who are not members to make their views known concerning ongoing and proposed district activities in accordance with the following requirements:

(1) The economic development district organization must hold meetings open to the public at least once a year and shall also publish the date and agenda of the meeting enough in advance to allow the public a reasonable time to prepare to participate effectively.

(2) The district organization shall adopt a system of parliamentary procedures to assure that board members and others have access to and an effective opportunity to participate in the affairs of the district.

(3) Information should be provided sufficiently in advance of public decisions to give the public adequate opportunity to review and react to proposals. District organizations should seek to relate technical data and other material to the public so they may understand the impact of public programs, available options and alternative decisions.

#### **§ 302.4 District organization functions and responsibilities.**

(a) All Economic Development District organizations are responsible for seeing that the following are provided on a continuing basis, consistent with the requirements of § 302.3:

(1) Organizational actions, including:

(i) Arranging the legal form of organization which will be used;

(ii) Arranging for the membership of the governing body to meet § 302.3 requirements;

(iii) Recruiting staff to carry out the economic development functions;

(iv) Establishing a management system;

(v) Contracting for services to carry out district functions;

(vi) Establishing and directing activities of economic development subcommittees; and

(vii) Submitting reports as determined by EDA to comply with civil rights requirements under part 317 of this chapter.

(2) Actions to develop and maintain the required district strategy, and any subsequent supplements or revisions, including:

(i) Preparing the analytic, strategic and implementation components of the strategy;

(ii) Adopting the strategy by formal action of the Economic Development District governing board;

(iii) Submitting the strategy, any supplements or revisions and annual reports for reviews by appropriate governmental bodies and interested organized groups, and attaching dissenting opinions and comments received; and

(iv) Submitting to EDA an approvable strategy.

(b) Organizations receiving EDA financial assistance for the development and implementation of Comprehensive Economic Development Strategies must also:

(1) Coordinate and implement economic development activities in the district, including:

(i) Assisting other eligible units within the district to apply for grant assistance for economic development purposes;

(ii) Carrying out economic development related research, planning, implementation and advisory functions as are necessary to the development and implementation of the strategy;

(2) Coordinate the development and implementation of the strategy with other local, State, Federal and private organizations (including minority organizations);

(3) Carry out the annual strategy for implementation; and

(4) Comply with the requirement of part 303.

#### **§ 302.5 Modification of district boundaries.**

EDA, at the request of a district and with concurrence of the State or States affected (unless such concurrence is waived by the Assistant Secretary), may modify the boundaries of a district, if it determines that such modification will contribute to a more effective program for economic development.

#### **§ 302.6 Termination and suspension of district designation.**

EDA may, upon 30 days prior written notice, terminate the designation status of an Economic Development District:

(a) When the district no longer meets the standards for designation as set forth above;

(b) When a district has not maintained a currently approved strategy in accordance with part 303 of this chapter; or

(c) When a district has requested termination (with the approval of the State or States affected).

#### **§ 302.7 Eligibility of non-distressed areas.**

Areas in districts which are not themselves eligible for assistance under parts 305 or 308 may be eligible, as provided in § 301.2(c).

### **PART 303—PLANNING PROCESS AND STRATEGIES FOR DISTRICT AND OTHER PLANNING ORGANIZATIONS SUPPORTED BY EDA**

Sec.

303.1 Definitions, purpose and scope.

303.2 Planning process.

303.3 Requirements for a strategy.

**Authority:** 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

#### **§ 303.1 Definitions, Purpose and Scope.**

(a) As used in this part 303.

(1) *Planning organization* means an Economic Development District organization, Indian tribe, or other recipient of an EDA grant under part 306 which grant is awarded in whole or in part to develop, update, or replace a CED Strategy, and

(2) *Strategy committee* means that committee or other entity identified by the planning organization as responsible for developing, updating, or replacing a strategy.

(b) This part describes the planning process of and requirements for strategies developed and implemented by planning organizations supported by EDA. The requirements for a strategy in this part 303 exceed the requirements of § 301.3.

**§ 303.2 Planning Process.**

(a) The strategy committee must be inclusive and representative of the main economic interests of the area covered by the strategy. Such interests include public officials, community leaders, private individuals, business leaders, labor groups, minorities, and others who can contribute to and benefit from improved economic development in the area covered.

(b) The planning organization must support the strategy committee with a staff skilled in economic planning or related fields.

(c) The planning organization must conduct an initial and continuous study and analysis of the opportunities for economic development and of problems contributing to economic and related distress in the area covered, such as, for example, unemployment, underemployment, outmigration, or low per capita income, and possible solutions to such problems.

(d) Planning organizations covered by this part 303 must submit an initial strategy to EDA in compliance with the requirements of § 303.3, as determined by EDA. Each year thereafter, the planning organization must submit an annual strategy report, acceptable to EDA.

(e) A new or revised strategy is required at least every five years, or sooner if EDA or the planning organization determines that the strategy is inadequate due to changed circumstances. Each strategy must be available for review and comment by appropriate government bodies and interest groups in the area covered. Strategies submitted by Districts require concurrence by the State or States in which they are located, prior to EDA approval. If EDA identifies any deficiencies, it will notify the organization in writing and provide the organization a reasonable opportunity to remedy such deficiencies.

**§ 303.3 Requirements for a strategy.**

A strategy must contain the following:

(a) An analysis of economic and community development problems and opportunities including incorporation of any relevant material or suggestions from other government sponsored or supported plans;

(b) Background and history of the economic development situation of the area covered, with a discussion of the economy, including geography, population, labor force, resources, and the environment;

(c) A discussion of community participation in the planning efforts;

(d) A section setting forth goals and objectives for taking advantage of the

opportunities of and solving the economic development problems of the area serviced;

(e) A plan of action, including suggested projects to implement objectives and goals set forth in the strategy; and

(f) Performance measures that will be used to evaluate whether and to what extent goals and objectives have been or are being met.

**PART 304—GENERAL SELECTION PROCESS AND EVALUATION CRITERIA**

Sec.

304.1 Project proposal, application, selection and evaluation for programs under PWEDA.

304.2 How EDA evaluates proposals and applications for projects funded under PWEDA.

**Authority:** 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

**§ 304.1 Project proposal, application, selection and evaluation for programs under PWEDA.**

(a) *Local projects.* Parties eligible as applicants who are interested in a public works, economic adjustment, planning, local technical assistance or university center project grant should contact the appropriate Economic Development Representative (EDR) (or EDA Regional or headquarters office), identified in the NOFA. The EDR or other EDA official is available to provide program information, including the current published NOFA; provide a proposal form approved by the U.S. Office of Management and Budget (OMB), and provide assistance as needed in filling out the proposal form.

(1) After submission of the proposal to the appropriate EDR or Regional Office of EDA, the appropriate Regional Office Project Review Committee (PRC), consisting of at least three EDA officials, will review the proposal. The EDR or other appropriate EDA official will evaluate the proposal under § 304.2, program specific sections of this rule, and the NOFA, if applicable, before submitting it to the EDA Regional Office for its review.

(2) After review by the PRC, EDA will send a letter in a timely manner to each submitter advising either that:

(i) EDA invites the submitter to prepare and present a formal application on a standard application form, with attachments for the type of grant being requested; or

(ii) EDA returns the proposal because of specified deficiencies and suggests resubmission when the deficiencies are cured; or

(iii) EDA denies the proposal for specifically stated reasons.

(b) *National Technical Assistance Research, Evaluation, or Training Projects.* Parties eligible as applicants who are interested in a national technical assistance, research, evaluation, or training project under PWEDA, should make initial contact with EDA in Washington, D.C., at locations identified in the NOFA, for information and assistance concerning proposals and to obtain program information, including a copy of the current NOFA, and OMB approved proposal form. After submission of the proposal to the appropriate EDA Washington, D.C. office, generally, three or more technically knowledgeable EDA officials will review the proposal for relevance and quality.

(1) If EDA determines that the proposal is acceptable under § 304.2, program specific sections of this rule, and the NOFA, if applicable, EDA may by letter invite the submitter to provide an application with a more detailed and comprehensive project narrative. EDA expects that applications will generally be submitted within 30 days after receipt of an invitation letter.

(2) If EDA determines that the proposal is not acceptable because of specified deficiencies, EDA will so notify the submitter in writing in a timely manner.

(c) EDA expects that applications will generally be submitted within 30 days after receipt of an invitation letter. EDA's invitation to submit an application does not assure EDA funding.

**§ 304.2 How EDA evaluates proposals and applications for projects funded under PWEDA.**

(a) General proposal and application evaluation criteria for projects funded under PWEDA are as follows: EDA will screen all proposals/applications for:

(1) Conformance to statutory and regulatory requirements,

(2) The relative severity of the economic problem of the area,

(3) The quality of the scope of work proposed to address the problem,

(4) The merits of the activity(ies) for which funding is requested, and

(5) The ability of the prospective applicant to carry out the proposed activity(ies) successfully.

(b) EDA will also review applications for conformance with any additional program specific evaluation criteria as stated in applicable sections of these rules or the NOFA.

(c) The NOFA may identify special areas of interest or priority consideration for the period of such NOFA.

## PART 305—GRANTS FOR PUBLIC WORKS AND DEVELOPMENT FACILITIES

### Subpart A—General

Sec.

305.1 Purpose and scope.

305.2 Criteria.

305.3 Application requirements.

305.4 Selection and evaluation.

### Subpart B—Other Requirements

305.5 Disbursements of funds for grants.

305.6 Final inspection.

305.7 Requirements for approved projects.

### Appendix A to Part 305—Requirements for Approved Construction Projects.

**Authority:** 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

### Subpart A—General

#### § 305.1 Purpose and scope.

The purpose of Public Works and Development Facilities grants is to help the Nation's distressed communities revitalize and expand their physical and economic infrastructure and thereby provide support for the creation or retention of jobs for area residents by helping eligible recipients with their efforts to promote the economic development of distressed areas. The primary focus is on the creation of new, or the retention of existing, long-term private sector job opportunities in communities experiencing significant economic distress as evidenced by high unemployment, low income, or a special need arising from actual or threatened severe unemployment or severe changes in local economic conditions. These grants are intended to help communities achieve sustainable economic development by developing and expanding new and existing public works and other infrastructure facilities that will help generate long-term jobs and economic growth, improve economic conditions or otherwise enhance and promote the economic recovery of the area.

#### § 305.2 Criteria.

(a) A grant may be made under part 305 for the following purposes:

(1) For the acquisition or development of land and improvements for use for a public works, public service or other type of development facility; or

(2) For the acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment.

(b) A grant may be made under part 305 only when:

(1) The project for which the grant is applied for will, directly or indirectly—

(i) Improve the opportunities, in the area where the project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities;

(ii) Assist in the creation of additional long-term employment opportunities in the area; or

(iii) Primarily benefit the long-term unemployed and members of low-income families;

(2) The project for which the grant is applied for will fulfill a pressing need of the area, or a part of the area, in which the project is or will be located; and

(3) The area for which the project is to be carried out has a strategy and the project is consistent with the strategy.

(c) Additional criteria, or priority consideration factors for assistance, may be set forth in a NOFA.

(d) Maximum assistance for each State. Not more than 15 percent of the annual appropriations available to carry out this part may be expended in any one State.

#### § 305.3 Application requirements.

Each application for a grant under part 305 must:

(a) Include evidence of area and applicant eligibility;

(b) Include, or incorporate by reference, a strategy, as provided in § 301.3;

(c) Identify the sources of the other funds, both eligible Federal and non-Federal, that will make up the balance of the proposed project's financing, including any private sources of financing. The application must show that such other funds are committed to the project and will be available as needed. The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant; and

(d) Explain how the proposed project meets the criteria of § 305.2.

#### § 305.4 Selection and Evaluation.

(a) Projects will be selected in accordance with the application evaluation criteria set forth in § 304.2 of this chapter.

(b) In addition to the evaluation criteria set forth in part 304 of this chapter, project selection and evaluation will be made on the basis of whether, and to what extent, the proposed project will:

(1) Assist in creating new or retaining existing private sector jobs and assist in the creation of additional long-term employment opportunities rather than merely transferring jobs from one area of the country to another;

(2) Be supported by significant private sector investment;

(3) Leverage or be a catalyst for the effective use of private, local government, State or other Federal funding that is available;

(4) Likely be started and completed in a timely fashion; and

(5) If the project is located in an area with a stable economy and low distress, provide employment opportunities for residents of nearby areas of high distress.

### Subpart B—Other Requirements

#### § 305.5 Disbursements of funds for grants.

(a) Disbursements of funds for construction grants are generally made on a reimbursable basis on request of the recipient for reimbursement. Disbursements may be made only:

(1) After execution of all contracts required for the completion of the project. This condition may be waived by EDA if the grantee can demonstrate that enforcement of the condition would place an undue burden on it;

(2) For itemized and certified eligible costs incurred, as substantiated by such documentary evidence as EDA may require;

(3) On the basis of the work accomplished and the percentage of EDA participation, but in no event for more than the total sum stated in the financial assistance award accepted by the grantee;

(4) Upon such evidence as EDA may require that grantee's proportionate share of funds is on deposit;

(5) After a determination by EDA that all applicable terms and conditions of the grant have been met; and

(6) After meeting such other requirements as EDA may establish in accordance with other Federal laws, rules and regulations.

(b) Disbursements are generally made in installments, based upon grantee's actual rate of disbursement in accordance with the grant rate.

(c) Advances of funds are allowable when disbursement on a reimbursable basis would impose an undue burden, as determined by EDA, upon the recipient.

#### § 305.6 Final inspection.

A final inspection will be scheduled by the recipient and appropriate notification given to EDA, when the project has been completed and all deficiencies have been corrected. EDA personnel may attend and participate in the final inspection and, in any event, EDA must be advised of the outcome of such final inspection and the recipient's acceptance of the work.

**§ 305.7 Requirements for Approved Projects.**

(a) The requirements for approved projects are set forth in this part and the EDA publication, *Requirements for Approved Construction Projects*, Appendix A to this part displayed at EDA's web site, <http://www.doc.gov/eda>. A copy of this publication is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance.

(b) Financial, performance, and progress reports will be specified in the Special Award Conditions of the grant.

**Appendix A to Part 305—Requirements For Approved Construction Projects**

OMB Approval No. 0610-0096  
Approval Expires 07/31/99

*Burden Statement for REQUIREMENTS FOR APPROVED CONSTRUCTION PROJECTS INTERIM NINTH EDITION, OCTOBER 1998:*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105-393. The reason for collecting this information is to enable the Economic Development Administration to monitor construction projects for compliance with Federal and other requirements. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 18 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**Requirements for Approved Construction Projects****Table of Contents***Section I. General and Pre-Construction Requirements*

1. Basis for Economic Development Administration Requirements
  - A. Applicable OMB Circulars & Code of Federal Regulations
  - B. Purpose of this publication
  - C. Changes to policies and procedures

- D. Variances to these requirements
2. The EDA Grant Award
  - A. Project description
  - B. Standard terms and conditions
  - C. Special conditions
  - D. Grant expiration date
  - E. EDA approved budget
  - F. Performance measures
3. Initial Actions
  - A. Initial EDA Regional Office actions
  - B. Pre-award construction
  - C. Davis-Bacon requirement for pre-award construction
4. Project Management Conference
5. Selection of the Architect/Engineer
  - A. Pre-award selection of the A/E
  - B. Acceptable forms of contracts
6. The Architect/Engineer Contract for Services
  - A. Suggested forms for contract format
  - B. Acceptable types of cost reimbursement for A/E services
  - C. Prohibited forms of compensation
  - D. Basic and special services
  - E. Construction inspection
  - F. A/E record keeping and access to records
  - G. Required provisions of the A/E contract
7. Multiple Contracts and Phasing
  - A. Project phasing
  - B. Disbursement of the grant for phased projects
8. Recipient Furnished Equipment and/or Materials
9. Services Performed by the Recipient's Own Forces
  - A. Use of in-house forces
  - B. Use of force-account forces
10. Construction Management Services
  - A. Definition of construction management services
  - B. Cost threshold
  - C. EDA approval for cost reimbursement
  - D. Compensation
  - E. Assigning responsibility
11. Certification of Acquisition of Land, Easements and Rights-of-Way
  - A. Title, easements, rights-of-way, etc.
  - B. Title opinions
  - C. Amount and cost of land, etc.
  - D. Changes in amount and cost of land
  - E. Federally owned/controlled airfield restriction
12. Relocation Assistance
13. Certification of Adequacy of Treatment of sewage and other waste
  - A. Certification of adequacy
  - B. Exceptions
  - C. Certification Requirements
14. Project Financing
15. Safeguarding Funds
  - A. Documentation of project costs
  - B. Use of minority banks
  - C. Separate bank accounts
  - D. Bonding of project fund custodian
16. Department of Commerce Metric Program
17. Seasonality
18. Design for the Handicapped
  - A. Source of requirement
  - B. Requirements for buildings
  - C. Exceptions
  - D. Waivers
19. Reporting of Project Progress
  - A. Recipient review of project progress
  - B. The project performance report
  - C. Project performance report due dates

- D. Reporting non-routine performance items
  - E. Project performance report format
  - F. Grant advances
  - G. Delinquent performance reports
  20. Environmental Requirements
    - A. Policy statement
    - B. Applicable directives
    - C. Hazardous substances requirements
  21. Project Revisions
- Section II: Contracting for Project Construction*
1. Contracting Standards
    - A. State recipients
    - B. Recipients other than states
    - C. The contract administration system
    - D. Standards of conduct
    - E. State and local agreements
    - F. Use of surplus property
    - G. Value engineering
    - H. Awards to responsible contractors
    - I. Maintenance of records
    - J. Use of time and material contracts
    - K. Settlement of contractual issues
    - L. Protest procedures
  2. Competition in Procurement
    - A. Full and open competition
    - B. Prohibition of use of state or local geographical preferences
    - C. Requirements for procurement actions
    - D. Use of prequalification lists
  3. Acceptable Methods of Procurement
    - A. Small purchase procedures
    - B. Procurement by sealed bids
    - C. Requirements for sealed bids
    - D. Procurement by competitive proposals
    - E. Procurement by noncompetitive proposals
  4. Unacceptable Method of Procurement
  5. Contracting with Disadvantaged Firms
    - A. Affirmative steps for use of disadvantaged firms
  6. Contract Cost and Price Analysis
    - A. The price analysis
    - B. The profit line item
    - C. Federal cost principles
    - D. Prohibited methods of contracting
  7. Advertising for Bids
    - A. Frequency of advertisement for bids
    - B. Requirements for projects over \$1,000,000
    - C. Additional circulation of invitation for bids
    - D. Thirty day limit
  8. Bonding and Insurance Requirements
    - A. Minimum bond amounts
    - B. Insurance requirements
  9. Bid Schedules for Alternative Materials
    - A. Use of bid schedules
    - B. Method of award
    - C. Exceptions and deviations
  10. Non-EDA Work
    - A. Requirements for adding non-EDA work
    - B. Restrictions on award of contract
  11. EDA Review of Proposed Procurement Documents
    - A. Procurement system certification
    - B. EDA approval of contract documents
    - C. EDA prebid review
    - D. EDA preaward review
    - E. Use of standardized documents and checklists
    - F. Proceeding at recipient's risk
  12. Construction and Services Contract Provisions
    - A. Required contract documents

- B. Cost documentation
- C. Required contract provisions
- 13. Wage Rates
  - A. Applicable act
  - B. Wage rate coverage
  - C. Different types of coverage
  - D. Period of wage rate validity
  - E. Application and exception for wage rates
  - F. Exceptions for railroads and public utilities
  - G. EDA or Department of Labor investigations
  - H. Record retention
  - I. Retroactivity of wage rates
- 14. The Bid Opening
  - A. EDA representation at the bid opening
- 15. Overrun at Bid Opening
  - A. When lowest bid exceeds funds available
  - B. When lowest bid less deductive alternates exceeds funds available
- 16. Underrun at Bid Opening
  - A. EDA notification
- 17. EDA Approval of the Contract Award
  - A. EDA approval
  - B. Requirements for EDA approval
  - C. Checking debarred ineligible or suspended contractors
- 18. Executed Bid Award
  - A. Contents of executed contract documents to be furnished to EDA
- 19. Preconstruction Conference

### Section III: Construction Procedures

- 1. Recipient Responsibilities
  - A. Recipient responsibilities for project monitoring
  - B. Recipient responsibilities for project documents
- 2. Employment of Local Labor
  - A. Anticipated labor requirements
  - B. Inclusion in contracts and subcontracts
- 3. Construction Progress Schedule
  - A. Construction progress chart
  - B. Monthly update
  - C. Acceptable formats
- 4. Construction Sign
  - A. Contractor responsibility
  - B. Location of sign
  - C. Local agency coordination
  - D. Modification of sign specifications
  - E. Bilingual signs
- 5. Inspection of Construction
- 6. Occupancy Prior to Completion
  - A. Recipient responsibilities
  - B. Role of EDA
- 7. Contractor Payrolls
  - A. Payroll retention requirements
  - B. Applicable Executive Order and form
- 8. Civil Rights Requirements
- 9. Contract Change Orders
  - A. Notification to and approval from EDA
  - B. Cost and price analysis
  - C. Required copies
  - D. Prohibited change of scope
  - E. Change order requirements
  - F. EDA approval
  - G. Substantial variations
- 10. Inspection for Final Acceptance
  - A. Final inspection
  - B. Interested parties
- 11. Specific Requirements for Subcontractors
- 12. Safety

### Section IV: Financial Administration

- 1. Standards for Financial Management Systems
  - A. Requirements for State recipients
  - B. Requirements for other recipients
  - C. EDA review
- 2. Grant Disbursements
  - A. The reimbursement method
  - B. Effect of program income
  - C. Withholding payments
  - D. Cash depositories
  - E. Interest earned on advances
- 3. Allowable Costs
  - A. Limitation on use of funds
  - B. Applicable cost principles
- 4. Period of Availability of Funds
  - A. General
  - B. Liquidation of obligations
- 5. Matching or Cost Sharing
  - A. Basic rule
  - B. Qualification and exceptions
  - C. Valuation of donated services
  - D. Valuation of 3rd party donated supplies and loaned equipment or space
  - E. Valuation of 3rd party donated equipment, buildings and land
  - F. Valuation of Recipient donated real property for construction/acquisition
  - G. Appraisal of real property
- 6. Program Income
  - A. General
  - B. Definition of program income
  - C. Cost of generating program income
  - D. Governmental revenues
  - E. Royalties
  - F. Sale of real property
  - G. Use of program income
  - H. Income after the award period
- 7. Non-Federal Audit

### Section V: Amendments to Grant Agreements

- 1. General Requirements
  - A. Unforeseen problems
  - B. Types of project amendments
  - C. Change of scope determination
- 2. Changes to the Project Scope
  - A. Definition of project scope
  - B. Approval by EDA
  - C. Types of project modifications
  - D. EDA review of proposed modifications
- 3. Time Extensions
  - A. Recipient responsibilities
  - B. Suspension of disbursements
  - C. EDA right to suspend or terminate the grant
- 4. Budget Line Item Revisions
  - A. Requirements for approval by EDA
  - B. Transfers between budget line items
  - C. Transfer from contingencies line item
  - D. Use of underrun funds
  - E. Notification of budget line item changes
- 5. Additional EDA Funding
  - A. Request for additional EDA funds
  - B. Proceeding before EDA approval
- 6. Termination of the EDA Grant
  - A. Termination for cause
  - B. Termination for convenience

### Section VI: Project Closeout Procedures

- 1. Audit Requirements
  - A. Securing Single Audit Act audit
  - B. Specific audits
  - C. Department of Commerce audits
  - D. Audit standards
- 2. Closeout Procedures
  - A. Beginning the closeout process

- B. Final grant reports
- C. Liquidation of obligations
- D. The final grant disbursement
- E. Eligible and ineligible costs
- F. After closeout requirements

### Section VII: Post Construction Grant Requirements

- 1. Real Property
  - A. Grantee ownership
  - B. EDA's reversionary interest
  - C. Successor grantees
  - D. Applicability of requirements
- 2. Definitions
- 3. Use of Property
  - A. Use only for authorized purposes
  - B. Property no longer needed for grant purpose
  - C. Property for lease or sale
  - D. Property substitutions
- 4. Unauthorized use
  - A. Disposal without EDA approval
  - B. EDA actions for disposal without approval
- 5. Federal Share
  - A. Calculation of federal share
  - B. Leasehold depreciation
  - C. Transfer to another eligible grantee
  - D. EDA interest after compensation
- 6. Encumbrances
  - A. Restrictions on encumbrances
  - B. Compensation for encumbrances
  - C. Waivers
  - D. Water and sewer exceptions
- 7. Civil Rights Restriction
- 8. Performance Reports
- 9. Record Retention
- 10. Program Income Earned After the Award Period

### Section VIII: Exhibits

#### Section I—General and Pre-Construction Requirements

##### 1. Basis for Economic Development Administration (EDA) Requirements

A. These Requirements for Approved Projects apply to all awards for construction projects and they are based on Office of Management and Budget (OMB) administrative requirements for Federal grants as set forth in OMB Circulars and on regulations set forth in the Code of Federal Regulations (CFR) Section 13 Chapter III, Section 15 Part 24 and Section 15 Part 14 as they may be amended.

B. These Requirements for Approved Projects are intended to organize and explain the various requirements that apply to Federally-assisted construction programs. They are not intended to derogate, replace, or negate the above cited Federal requirements. Conflicts between these Requirements for Approved Projects and the documents referred to above should be brought to the attention of EDA immediately. Any inconsistencies or conflicts shall be resolved in favor of such Federal requirements.

C. EDA, as a Federal agency, is obligated to promulgate policies and procedures applicable to Recipients of EDA grants to insure compliance with Federal requirements, to safeguard the public's interest in the grant assets, and to promote the effective use of grant funds in accomplishing the purpose for which they

were granted. Pursuant to this obligation, grant terms and conditions require Recipients to comply with changes in regulations and other requirements and policies EDA may issue from time to time. Such changes apply to actions taken by all Recipients of EDA grants, existing and prospective, after the effective date of the changes.

D. EDA's policy is to administer grants uniformly, but it is understood that there may be situations warranting a variance. To accommodate these situations and to encourage innovative and creative ways to address economic development problems, requests for variances to the requirements of this Requirements for Approved Projects will be considered if they are consistent with the goals of EDA programs, make sound and financial sense, and do not conflict with applicable Federal and regulatory requirements.

## 2. The EDA Grant Award

The EDA grant award contains mandatory requirements and information vital to the accomplishment of the project. It should be read carefully with particular attention paid to:

A. The description of the project. This description and the corresponding scope of work must be adhered to. Proposed changes to EDA approved projects will be permitted by EDA only if they are necessary to the proper functioning of the project. Enhancements to the project that were not envisioned in the grant award will not be approved for EDA participation.

B. The Standard Terms and Conditions for Title I Public Works and Development Facilities and Title IX Economic Adjustment Construction Projects. The Standard Terms and Conditions contain, by reference or substance, a summary of the pertinent statutes, regulations published in the **Federal Register** or Code of Federal Regulations, Executive Orders or OMB Circulars.

C. The Special Conditions of the grant award. The Special Conditions generally contain two types of information. The first type relates specifically to the grant being awarded. The second type relates to all approved grants and are of recent origin and therefore have not yet been incorporated into the Standard Terms and Conditions. Special attention should be paid to the Project Development Time Schedule. The time schedule can only be extended as a result of a written request from the Recipient and a written approval by EDA. Failure to meet the time schedule is considered a violation of the grant award and may result in action by EDA to suspend and/or terminate the grant. No disbursement of EDA grant funds is permitted when a project has exceeded the time schedule in the grant award unless EDA has given written approval to a time schedule extension.

D. Please note that, unless otherwise stated, EDA funds are available for a period beginning at the time the project is approved and ending five years after the end of the fiscal year in which the project was approved. Any funds not disbursed to the Recipient before the end of that period are automatically canceled and will be deobligated and will no longer be available

for payment of costs incurred by the Recipient.

E. Combination construction and nonconstruction grants. If the EDA grant award is for both construction and nonconstruction, the Recipient must obtain prior written approval from EDA before making any fund or budget transfer from nonconstruction to construction or vice versa.

F. Performance Measures. The Standard Terms and Conditions of the EDA grant award make reference to "Core Performance Measures" that require post-construction reports to be submitted to EDA. The first report will be due at the completion of construction of the project. The due dates for the submission of the second and third reports are 3 years and six years after the completion of construction. Questions regarding the content or submission of these reports should be directed to EDA.

## 3. Initial Actions

A. After the Grant Award has been affirmed, the EDA Regional Office will mail a pre-construction package to the Recipient that includes a copy of "Requirements for Approved Projects", and a list of items that need special attention (such as the project development time schedule), and a list of any unresolved problems identified during the preapproval review process. The EDA Project Manager will then contact the Recipient to offer assistance and guidance, to arrange for an updated schedule of the Recipient's proposed activities and to arrange a Project Management Conference.

B. Because it is the policy of EDA to discourage the undertaking of any construction prior to the submission of an application for financial assistance, special consideration and judgment must be executed if it becomes necessary for a project to proceed prior to award of the EDA grant. Commencement of a project prior to approval of the application for assistance is not prohibited, but it may jeopardize the favorable consideration of such application since, among other things, it raises a rebuttable presumption that funds necessary for the accomplishment of the project are otherwise available and that proper contracting procedures and labor standards may not have been followed.

C. If construction of the project was begun before affirmation of the grant award, the Recipient will be required to document to EDA's satisfaction that it has complied with all EDA requirements, including but not limited to the payment of Davis-Bacon wages from the start of construction and environmental requirements, in order to qualify for EDA reimbursement of costs incurred, if agreed to in the grant award.

## 4. Project Management Conference

Whenever practical, the Project Management Conference will be held at the Recipient's location; however, if necessary and required for appropriate EDA personnel to be present, it may be held at another location including in the Regional Office. The Recipient's Authorized Representative, Architect/Engineer, attorney and possibly the Recipient's financial representative should be

in attendance. Reasonable costs for transportation, meals and lodging for these individuals are an authorized cost under the administrative line item in the project budget. Per diem costs eligible for EDA reimbursement may not exceed the current Federal per diem rate.

## 5. Selection of the Architect/Engineer

A. If an Architect/Engineer has been selected by the Recipient prior to EDA approval of the grant award and the contract between the Recipient and the Architect/Engineer has not been previously submitted to EDA, it should be submitted as soon after the grant award as possible. If the selection has not been made at the time of grant award the contract should be sent to the EDA Regional Office as soon as possible after its execution by both parties.

B. For EDA to participate in the cost for architect/engineer services the Architect/Engineer must be selected competitively by sealed bids (formal advertising) or by competitive proposals. If the selection is made by competitive proposal the following requirements apply:

(1) Requests for proposals shall be publicized and shall identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(2) Proposals will be solicited from an adequate number of qualified sources (normally sufficient to secure at least three proposals from qualified proposers);

(3) The Recipient will have a method for conducting technical evaluations of proposals received and for selecting the best proposal, price and other factors considered;

(4) The Recipient will determine the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. Competitor's qualifications will be evaluated and the most qualified competitor will be selected, subject to negotiation of fair and reasonable compensation.

## 6. The Architect/Engineer Contract for Services

A. The architect/engineer agreement shall provide for all services required by the Recipient for the planning, design and construction phase of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council (ACEC), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), and/or the American Institute of Architects (AIA) may be used where the Recipient does not have standard procurement documents.

B. The Architect/Engineer's fee for basic services must be either a fixed price or a cost reimbursement with an agreed maximum to be eligible for EDA participation. The amount of EDA participation will be based on a determination, subject to audit, that the compensation is reasonable.

C. The use of the cost-plus-a-percentage-of-cost and percentage of construction cost forms of compensation are specifically prohibited.



D. The Architect/Engineer's fee shall cover all services necessary for the successful execution of the project, including consultations, surveys, soil investigations, supervision, travel, "as-built" or record drawings, arrow diagram (CPM/PERT) where applicable, and incidental costs. The basic fee shall not exceed that prevailing for comparable services in the project area. If the total fee is in excess of the prevailing rate because of special services to be performed, these services shall be identified in the agreement. Such additional charges may be approved for grant participation by EDA if they:

(1) Do not duplicate a charge for services provided for in the basic fee and are within the normal scope of the Architect/Engineer's responsibilities;

(2) Are a proper charge against the project cost; and

(3) Are reasonable for the extra services to be rendered.

E. Regardless of who furnishes the construction inspector, the Architect/Engineer shall be held responsible for making sufficient visits to the project site to determine, in general, if the work is proceeding in accordance with the construction contract.

F. All negotiated Architect/Engineer contracts (except those of \$100,000 or less awarded under small purchase procedures) awarded by Recipients shall include a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, the Inspector General of the Department of Commerce, or any of their duly authorized representatives, shall have access to any documents, books, papers, and records of the Architect/Engineer (which are directly pertinent to a specific grant project) for the purpose of making an audit, examination, excerpts, and transcriptions. The Recipient shall require the Architect/Engineer to maintain all required records for at least three years after the Recipient makes final payment and all pending matters are closed.

G. EDA requirements for the agreement for Architect/Engineer services are contained in Exhibit A-1 to these "Requirements for Approved Projects".

#### 7. Multiple Contracts and Phasing

A. The Recipient is strongly urged to award all contracts for the project construction at one time. Where compelling reasons justify phasing the project, the Recipient must secure the approval of EDA for phasing prior to advertising any portion for bid. The Recipient's request for approval of phasing must include:

(1) Valid reasons justifying the request, and  
(2) A statement from the Recipient that it can, and will, fund any overrun that arises in the later phases.

B. Normally EDA will not disburse funds until all construction contracts have been awarded (an exception is the development of a water source when required to determine the availability of an adequate source of water supply in terms of both quality and quantity as called for in the Grant Agreement). Disbursement of grant funds by phases must be approved by EDA. Such

approvals will be given only if the Recipient can demonstrate that a severe hardship will result if such approval is not given and there are compelling reasons why all phases cannot be contracted for at the same time. The Recipient must be capable of meeting incurred costs prior to the first disbursement of EDA grant funds.

#### 8. Recipient Furnished Equipment and/or Materials

The Recipient may wish to incorporate into the project equipment and/or materials which it will secure through its own efforts. It is the responsibility of the Recipient to assure that such equipment and/or materials are adequate for the proposed use. The use of such equipment and materials must be approved by EDA to be eligible for EDA financial participation. The Recipient must be prepared to show that the cost claimed for such equipment and/or materials is competitive with local market costs. Acquisitions of Recipient furnished equipment and/or materials under this section is subject to the requirements of 15 CFR Part 24 or OMB Circular A-110 (or any DOC rule implementing such Circular, as applicable). The Recipient shall be required to submit with its request for approval either a paid invoice or current quotes from not less than three suppliers who normally distribute such equipment and/or materials. EDA may require that major equipment items be subject to a lien in favor of EDA and may also require a statement from the Recipient regarding expected useful life and salvage value.

#### 9. Services Performed by the Recipient's Own Forces

A. The Recipient may have a portion or all of the design, construction, inspection, legal services, or other work and/or services in connection with the project performed by personnel who are employed by the Recipient either full-time or part-time (in-house), subject to the following conditions:

(1) EDA must review and approve the Recipient's plan if this method is to be elected by the Recipient.

(2) Such work or services performed by in-house personnel may be considered an eligible cost for EDA reimbursement if in conformance with Office of Management and Budget Circulars A-87, A-21 or A-122, as appropriate.

(3) If a portion of the architect/engineer services is to be performed by in-house forces, the Recipient will submit a statement listing the services to be so performed. This statement should accompany the architect/engineer agreement when it is submitted to EDA for approval.

B. Due to the difficulty in monitoring force account construction and the limited EDA staff available to perform the monitoring, force account construction is strongly discouraged. The force account method of construction may be approved only if:

(1) The Recipient has a special skill required for the construction, e.g., construction of unique Indian structures, or  
(2) Substantial cost savings can be demonstrated, or

(3) The Regional Office is satisfied that the Recipient has made all reasonable efforts to

obtain a contractor, but has failed to do so because of uncontrollable factors, such as the remoteness of the site combined with a small contract or an overabundance of construction work in the project area, or

(4) It has been determined by EDA that special circumstances require its use to successfully complete the project.

(5) EDA has available the publication, "Guidelines for Force Account Projects", which can be secured from the EDA Regional Office. This publication can be very helpful in ensuring that this type of project activity would be an eligible project cost.

#### 10. Construction Management Services

A. For the purposes of this document, Construction Management is defined as the services of a firm with competent and experienced staff to act as the Recipient's agent to perform all or part of the following:

(1) Aid the project designer to find expedited or less costly methods of construction (Value Engineering).

(2) Monitor the contracting process. This may vary in scope from giving advice to the Recipient to complete control of the contracting process.

(3) Inspection or supervision of inspection of the construction work.

(4) Controlling the expenditure of project funds on a multi-faceted or highly complex project.

(5) Controlling unusual methods of contracting such as "fast track" or "turn-key".

B. EDA will not normally approve the use of a Construction Management firm for projects costing less than \$5 million.

C. If the Recipient wishes to use a Construction Manager, EDA will participate in such costs only if EDA approves the proposed or actual contract for such services between the Recipient and the Construction Manager.

D. The compensation for Construction Management services is subject to the same rules as those for architect/engineer services.

E. The Construction Management Agreement must spell out who is responsible for construction inspection, approval of construction and supply contracts, change orders and other areas of possible conflicts (i.e., the division of responsibility and authority between the Recipient, the Architect/Engineer and the Construction Manager).

#### 11. Certification of Acquisition of Land, Easements and Rights-of-Way

A. As required in the Financial Assistance Award the Recipient must furnish evidence satisfactory to the EDA that it has good and merchantable title to the tracts or parcels of land on which buildings, structures, or other project improvements will be located, with any liens or encumbrances noted, and that it has obtained all necessary easements, permits, rights-of-way, franchises, condemnations, and all Federal, State and local approvals necessary to the completion of the project.

B. To aid EDA in making its determination, the Recipient must furnish a description of the sites and rights-of-way on which the project will be located. Exhibit C of this



document is a "Certificate as to Project Site, Rights-of-Way, and Easements," which is a format acceptable to EDA as evidence of the Recipient's title to the real property necessary for the project. The Recipient has the option to prepare the title opinion in a format that meets local law or custom. Any title opinion submitted must be approved by EDA. EDA may require additional documentation.

C. If land acquisition is a part of the project, the EDA project file must be documented to show the basis for determining that the amount of land acquired and the cost of the land is reasonable. If an appraisal is required, a professional appraiser(s) should perform the service. An appraiser registered with a national society and/or licensed by the State will normally be required.

D. Any significant change in the amount and cost of land from that upon which the project approval was based must be approved by EDA to be eligible for EDA reimbursement.

E. No financial assistance under the Act will be approved for a project involving public or privately owned land adjacent to or in the vicinity of a federally owned or operated airfield, unless the Recipient can demonstrate that the proposed project is compatible with the airfield land use plan prepared for that facility.

#### 12. Relocation Assistance

The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), as amended, are applicable to all States and political subdivisions of States and non-profits which are recipients of EDA funding assistance. This Act requires financial and other assistance to persons, businesses, or farm operations displaced from real property acquired for a project financed wholly or in part with Federal funds. It also requires compliance with specific guidelines pertaining to reimbursable costs incidental to such land acquisition. Recipients are required to comply fully with the intent of this Act.

#### 13. Certification of Adequacy of Treatment of Sewage and Other Waste

A. EDA will not provide financial assistance for projects involving sewer or other waste disposal facilities unless a State permit has been obtained by the Recipient in those States where EPA has delegated authority to the State to certify adequacy of treatment. In those States where EPA has not delegated such authority, a certificate of adequacy of treatment must be obtained from EPA in addition to a State permit.

B. Certification of adequacy of treatment is not normally required under the following conditions:

- (1) For single service connections unless an unusual effluent is expected.
- (2) For replacement of portions of an existing sewer system where sewage flow resulting from the project is not increased.
- (3) For projects which will include only storm drainage as the component and the flow from the storm sewer is not introduced in the existing sanitary sewer system.

C. If EPA certification is required, EDA will not authorize the advertising, bid opening nor a disbursement of grant funds until an unconditional certificate has been obtained. The EDA Project Manager will prepare all EDA requests to EPA for Certificates of Adequacy of Treatment for projects which involve sewage and/or storm drainage facilities. The certification should be obtained as early as practicable after acceptance of the project application by EDA. The Recipient must provide as much of the following information as is required to obtain the certification:

- (1) For sanitary sewer system.
  - a. A general descriptive statement of the project explaining the problem to be eliminated and the proposed method of elimination.
  - b. A vicinity map of the complete project area showing the location and size of all existing and proposed sanitary and storm sewer lines in plan view, the street system, topographical features, overflows and bypasses.
  - c. Project design criteria, including the following data:
    - (i) Industrial and domestic contribution. (Type of industrial contribution should be stated).
    - (ii) Line and treatment facility sizing and design criteria used therefor.
    - (iii) Population figures used.
    - (iv) Number of existing and planned sewer connections.
  - d. Design criteria to be used for the new treatment facilities. This should include the following data:
    - (i) Type and extent of existing treatment.
    - (ii) Industrial and domestic contribution. (Type of industrial contribution should be stated).
    - (iii) Peak and average flow data.
    - (iv) Component sizing and design criteria used therefor.
  - e. For existing treatment facilities to be affected by the proposed project submit the design criteria, permit number and effluent limitations.
  - f. If available, as-built drawings of existing treatment facilities showing the location, type, number and size of the treatment facilities. If as-built drawings are not available a single line drawing of the existing structures such as lift stations, manholes, pumping stations, etc., will be accepted.
  - g. Agreements, if any, for treatment by other entities.

(2) For projects involving only storm sewer facilities submit the following dated statement, signed by the Recipient's authorized representative: "This proposed storm water sewer system will be constructed and operated so as to exclude the introduction of domestic sewage and industrial or agricultural waste and will not be connected in any way to a sanitary sewer system."

(3) Upon receipt by EDA, the certification of adequacy of treatment will be reviewed to assure that the certification is unconditional. EDA will not accept a conditional certification (defined as an approval conditioned on the occurrence of a future event such as the future construction of a sewage treatment plant).

#### 14. Project Financing

Prior to obtaining EDA approval of the project's final plans and specifications, the Recipient should furnish evidence to the EDA Project Manager that the Recipient has its share of matching funds either on hand or firmly committed. Any change in the amount or availability of the Recipient's share must be made known to EDA at this time. This is equally true of the interim financing amount and availability.

#### 15. Safeguarding Funds

A. Checks drawn to pay project costs will be signed by the Authorized Representative of the Recipient and may be counter-signed by other representatives of the Recipient if he/she so designates. The Recipient shall retain all bank statements, deposit slips, canceled checks, and related invoices pertaining to these project costs to facilitate final audit.

B. Consistent with the national goal of expanding the opportunities for minority business enterprises, Recipients are encouraged to use minority banks as the depository for project funds.

C. Although a separate bank account is not required by EDA, the Recipient is urged to use one for the EDA project as it will be helpful to audit project costs claimed by the Recipient at project closeout.

D. For non-governmental Recipients EDA requires that the Recipient furnish evidence that the custodian of the project funds is bonded in an amount not less than the amount of the EDA grant. If subject to 15 CFR Part 24, the Recipient must furnish assurances that the Recipient's financial management system meets the requirements of 15 CFR Part 24.20, Financial Administration, if this was not accomplished prior to approval of the grant award.

#### 16. Department of Commerce Metric Program

Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418) designates the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce.

#### 17. Seasonality

It is EDA policy to promote construction of projects continuously throughout the year. Recipients and their Architect/Engineers are encouraged to design projects so that construction will not be unreasonably curtailed by weather.

#### 18. Design for the Handicapped

A. Any building or facility financed in whole or in part with assistance under the Act must be designed, constructed, or altered, so as to insure ready access to, and use of, such building or facility by the physically handicapped, as required by P.L. 90-480 (42 U.S.C. 4151-4156) and the regulations promulgated thereunder (41 CFR Subpart 101-19.6).

B. Except as otherwise provided in paragraph C of this section, every building, except a residential structure, shall be designed, constructed, or altered in accordance with the minimum standards contained in the "American National Standard Specifications for Making Buildings

and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A 117.1 (1971) approved by and available from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

C. The standards established in paragraph (B) of this section shall not apply to:

(1) The design, construction, or alteration of any portion of a building or facility which need not, because of its intended use, be made accessible to, or usable by, the public or by physically handicapped persons;

(2) The alteration of an existing building if the alteration does not involve the installation of, or work on, existing stairs, doors, elevators, toilets, entrances, drinking fountains, floors, telephone locations, curbs, parking areas, or any other facilities susceptible of installations or improvements to accommodate the physically handicapped;

(3) The alteration of an existing building or facility, or of such portions thereof, to which application of the standards is not structurally possible.

D. The standards established in paragraph (B) of this section may be modified or waived on a case-by-case basis, provided that the Administrator of the General Services Administration determines that such waiver or modification is clearly necessary.

#### 19. Reporting of Project Progress

A. Recipients are required to constantly monitor project progress to assure that time schedules are being met, project work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity as set forth in the approved grant application.

B. The Recipient is required to submit a project performance report for each calendar quarter. The report will cover the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the timetable established in the Grant Award;

(2) Reasons for delays in those cases where the time table approved by EDA was not met;

(3) Any change to the purpose, nature, location, bona-fide need, neighborhood served, size, funding, or cost of the project;

(4) All change orders issued up to the date of the report and not previously reported to EDA, and

(5) Other pertinent information including, when appropriate, an analysis and explanation of and cost overruns or high unit costs.

C. The project performance report will be due not later than January 15, April 15, July 15 and October 15 for the immediate previous quarter year. This requirement shall begin with the Recipient's acceptance of the EDA Grant Award and shall end when EDA approves the final grant disbursement.

D. Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the Recipient will be required to inform EDA as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially affect the ability of the Recipient to attain program objectives,

prevent the meeting of time schedules and goals, or preclude the attainment of project work by established time periods. This disclosure shall be accomplished by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work than originally projected; or

(3) If any performance review conducted by the Recipient discloses the need for change in the budget estimates, the Recipient is required to submit a request for budget revision.

E. A sample format for the required project performance report is included herein as Exhibit J. The report will be sent to the EDA Regional Office. The Recipient may use a format other than the EDA sample, provided that the information called for in this section is furnished.

F. EDA does not normally permit grant advances. However, where EDA determines that grant advances are necessary and in the best interest of the Government and the Recipient, the Recipient will be required to submit with the project performance report a Report of Federal Cash Transactions. The EDA Regional Office shall furnish the required forms for this report.

G. EDA will not process any requests for grant disbursement from Recipients with delinquent performance reports.

#### 20. Environmental Requirements

A. EDA is required by law to insure that proper environmental review of its actions take place; that there is a proper balance between the goals of economic development and environmental enhancement in its actions; and, that adverse environmental impacts from its actions are mitigated or avoided to the extent possible.

B. Environmental assessments of EDA actions are conducted in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et. seq.), the Environmental Quality Improvement Act (42 U.S.C. 4371 et. seq.), The Clean Air Act, as amended (42 U.S.C. 7401 et. seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et. seq.), The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271 et. seq.), the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4002 et. seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq.), and the Council on Environmental Quality (CEQ) Regulations (40 CFR Section 1500-1508), as specified in EDA Directives 17.02-2, 17.02-7, and 17.04, as hereafter amended or superseded. Directives are available from any EDA office.

C. EDA recipients are subject to Federal, state and local requirements concerning hazardous substances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Public Law 96-510 (1980), as amended by Public Law 99-499 (1986), 42 U.S.C. 9601-9675; and the Resource Conservation and Recovery Act (RCRA), Public Law 89-272 (1965), as amended by Public Law 94-580 (1976),

Public Law 96-482 (1980) and Public Law 98-616 (1984), 42 U.S.C. 6901-6991.

#### 21. Project Revisions

After Recipient acceptance of the EDA grant award, any change to the project as described in the grant award must be reviewed and approved by EDA. To be eligible for EDA financial participation the proposed revision must meet certain conditions. See Section V of this document for guidelines on securing EDA approval of proposed project revisions.

### Section II—Contracting For Project Construction

#### 1. Contracting Standards

A. For States: If a State is the recipient of the EDA grant award, the State may follow the same policies and procedures it uses for procurements from its non-Federal funds provided that the State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and Executive Orders and their implementing regulations. For reimbursable cost determinations, OMB Circular A-87 will be applicable.

B. For Other than States: Recipients of EDA grants other than States may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards contained in these "Requirements for Approved Projects". Recipients may request EDA to approve self-certification of their procurement system. Such self-certification shall not limit EDA's right to survey the system. The Recipient must cite specific procedures, regulations, standards, etc. as being in compliance with EDA and other Federal requirements and have its system available for review. In the absence of written procurement regulations issued by the Recipient which meet the following requirements, applicable federal procurement standards shall govern.

C. Contract Administration System: Recipients will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.

D. Standards of Conduct: Recipients shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the Recipient shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the following has a financial or other interest in the firms elected for award:

- (1) an employee, officer or agent
- (2) any member of his/her immediate family
- (3) his or her partner
- (4) an organization which employs, or is about to employ, any of the above.

The Recipient's officers, employees or agents shall neither solicit nor accept

gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements except that Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Recipient's officers, employees, or agent, or by contractors or their agents.

**E. State and Local Agreements:** To foster greater economy and efficiency, Recipients are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

**F. Surplus Property:** Recipients are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

**G. Value Engineering:** Recipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. EDA will not normally approve value engineering costs for construction contracts with estimated costs of less than \$1,000,000. Value engineering is defined for the purposes of this paragraph as a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. Value engineering, as a function, is done separately from the architect/engineer design by a person or firm not controlled by the architect/engineer.

**H. Awards to Responsible Contractors:** Recipients will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources.

**I. Maintenance of Records:** Recipients will maintain records sufficient to detail the significant history of each procurement affecting the EDA assisted project. These records will include, but are not necessarily limited to, the rationale for method of procurement, selection of contract type, contractor selection or rejection, and the basis for contract price.

**J. Time and Material Contracts:** Recipients will use time and material type contracts only:

- (1) After a determination that no other type of contract is suitable, and
- (2) If the contract includes a ceiling price that the contractor exceeds at its own risk.

**K. Settlement of Issues:** Recipients alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes and claims. These standards do not relieve the Recipient of any contractual responsibilities under its contracts. EDA will

not substitute its judgment for that of the Recipient unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

**L. Protest Procedures:** Recipients will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to EDA. A protestor must exhaust all administrative remedies with the Recipient before pursuing a protest with EDA. Reviews of protests by EDA will be limited to:

- (1) Violations of Federal law or regulations (violations of State or local law will be under the jurisdiction of State or local authorities); and

- (2) Violations of the Recipient's protest procedures for failure to review a complaint or protest. Protests received by EDA other than those specified above will be referred to the Recipient for resolution.

## 2. Competition in Procurement

**A.** All procurement transactions affecting the EDA project will be conducted in a manner providing full and open competition consistent with the standards contained herein. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (2) Requiring unnecessary experience and excessive bonding,
- (3) Noncompetitive pricing practices between firms or between affiliated companies,
- (4) Noncompetitive awards to consultants that are on retainer contracts,
- (5) Organizational conflicts of interest,
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and
- (7) Any arbitrary action in the procurement process.

**B.** Recipients will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in these Requirements for Approved Projects preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographical location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

**C.** Recipients will have written selection procedures for procurement actions. These procedures will ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such descriptions shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or

service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

**D.** Recipients will ensure that all lists of prequalified persons, firms or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, Recipients will not preclude potential bidders from qualifying during the solicitation period.

## 3. Acceptable Methods of Procurement

**A. Procurement by Small Purchase Procedures:** Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000) in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources (normally at least three quotes will be required).

**B. Procurement by Sealed Bids (formal advertising):** Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. The sealed bid method is the preferred method for procuring construction. In order for sealed bidding to be feasible, the following conditions should be present:

- (1) A complete, adequate and realistic specification or purchase description approved by EDA is available,
- (2) Two or more responsible bidders are willing and able to compete effectively for the business, and
- (3) The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

**C.** If sealed bids are used, the following requirements apply:

- (1) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for the opening of bids.

- (2) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.

- (3) All bids will be publicly opened at the time and place prescribed in the invitation for bids.

(4) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

(5) Any or all bids may be rejected if there is a sound and properly documented reason.

D. Procurement by Competitive Proposals: The technique of competitive proposals may be used on EDA projects to secure architect/engineer services and is conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals will be publicized and will identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical.

(2) Proposals will be solicited from an adequate number of qualified sources (normally EDA requires responses from at least three responsible firms).

(3) Recipients will have a method for conducting technical evaluations of the proposals received and for selecting awardees.

(4) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

(5) Recipients may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

E. Procurement by Noncompetitive Proposals: This technique requires EDA prior written concurrence and is conducted by solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(1) The item is available only from a single source; or

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or

(3) After solicitation of a number of sources, competition is determined inadequate.

#### 4. Unacceptable Method of Procurement

The cost-plus-a-percentage-of-cost method of contracting is unacceptable for use on EDA assisted projects. EDA grant funds may not be used to reimburse costs incurred under such a contract.

#### 5. Contracting with Disadvantaged Firms

A. The Recipient shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises;

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration, and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

#### 6. Contract Cost and Price Analysis

A. Recipients must perform a cost or price analysis in connection with every procurement action including contract modifications (change orders). The method and degree of analysis is dependent upon the facts surrounding the particular procurement situation, but as a starting point, Recipients must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural/engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

B. Recipients will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be

performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance and industry profit rates in the surrounding geographical area for similar work.

C. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see OMB Circulars A-21, A-87 or A-122 as applicable). Recipients may reference their own cost principles that comply with the applicable Federal cost principles.

D. The cost-plus-a-percentage of cost and percentage of construction cost methods of contracting shall not be used.

#### 7. Advertising for Bids

A. In the absence of State or local law to the contrary, the advertisement for bids should appear in publications of general circulation a minimum of four times within a 30 day period prior to the opening of bids.

B. When the estimated construction cost exceeds one million dollars, the advertisement for bids should appear in publication(s) with national circulation a minimum of four times within the 30-day period prior to the opening of bids.

C. Additional circulation of the invitation for bids is encouraged if it is needed to obtain the coverage necessary to secure competitive bids.

D. Generally, a minimum of 30 days should be allowed for submission of bids.

#### 8. Bonding and Insurance Requirements

A. For construction or facility improvement contracts or subcontracts exceeding \$100,000 the following minimum bonding requirements apply:

(1) The bonding company selected must be listed in U.S. Treasury Department Circular 570.

(2) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(3) A performance bond on the part of the contractor for 100 percent of the contract price.

(4) A payment bond on the part of the contractor for 100 percent of the contract provisions.

B. The Recipient shall require that each construction contractor and all subcontractors maintain, during the life of its contract, Workmen's Compensation Insurance, Public Liability Insurance, and such other types of special coverage required by the nature of the work and State and local law. When appropriate, the Recipient shall require the prime contractor to provide Builder's Risk Insurance as part of the construction contract. In any case, the responsibility for seeing that coverage is obtained and kept in force remains with the Recipient. Such coverage is an eligible project cost, when obtained by the Recipient directly.

### 9. Bid Schedules for Alternative Materials

A. Should the Recipient, acting upon the advice of his/her consultant Architect/Engineer desire to obtain competitive prices for differing materials, such bids should be requested on the basis of "Bid Schedule A", "Bid Schedule B", etc. Bid Schedules, as used herein, refer to the method used to obtain bids on more than one material to be used for the same purpose. As an example, if 2,000 linear feet of sewer line were to be installed, Bid Schedule A might call for the pipe material to be cast iron. Bid Schedule B might call for the pipe material to be ductile iron. Bid Schedule C might call for the material to be asbestos cement, etc.

B. If bids are asked for on the basis of two or more Bid Schedules as set forth above, the bid documents must clearly set forth that the contract will be awarded to the bidder having proposed the lowest responsive bid within the amount of funds announced as available by the Recipient to finance the contract and including the Bid Schedule upon which that Contractor bid the lowest price.

C. If the Recipient wishes to use a bid material which will result in increased cost, EDA may permit the use of the material chosen, but the amount of grant participation by EDA shall remain based on the lowest responsive bid. The contract must be awarded to the lowest bidder determined in accordance with the procedure described above unless a deviation is specifically allowed in applicable State and local law.

### 10. Non-EDA Work

A. If the Recipient plans to add work that is in addition to the approved EDA project, the following will apply:

(1) The advertisement for bids, all bid documents, and contract documents shall clearly define and separate the EDA portion of the work from the non-EDA portion.

(2) The Recipient may offer for bid and award work in addition to the EDA portion, provided:

a. the Recipient understands that EDA will participate in the EDA portion only;

b. the additional work does not adversely affect the original intent of the EDA project or its economic impact, as approved.

(3) Contracts shall be so drawn that the EDA-assisted portion of the work is clearly identifiable at all times during construction.

(4) Underruns in the EDA project cannot be applied to assist the Recipient in funding work which is not a part of the EDA project. It is the responsibility of the Recipient to pay for all added work in full.

(5) In the event of an overrun on the EDA portion of the work, it is the Recipient's responsibility to supply the necessary additional funds and to deposit such funds in the project account. A revised project budget estimate will then be prepared which will clearly show the portion of project cost to be shared by EDA and the portion the Recipient must fund in its entirety. In addition, the overall percentage participation of EDA in the project shall be clearly identified.

B. When the EDA project is included with non-EDA assisted work, the Recipient will normally award to the lowest bidder on all the work. However, EDA participation will

be based on the lowest bid for the EDA-assisted portion. When this occurs, the Recipient will prepare a memorandum to EDA, which will clearly present the details of the award.

### 11. EDA Review of Proposed Procurement Documents

A. If a Recipient wishes to have its procurement system certified by EDA, it should follow the procedures in Section II 1 B of these "Requirements for Approved Projects". If EDA certifies the Recipient's procurement system, the Recipient may not have to submit proposed bid documents to EDA for approval if instead it submits an executed copy of the Checklist for Construction Contracts (see Exhibit A-2).

B. EDA approval of plans, specifications, contract and related documents is to assure compliance with terms of the EDA grant award and does not attest to the accuracy or completeness of design, dimensions, details, proper selection of materials nor compliance with required codes or ordinances. This responsibility rests with the Recipient.

C. A pre-bid review of proposed construction bid documents by EDA is required if:

(1) The procurement is expected to exceed the simplified acquisition threshold (currently \$100,000) and the Recipient's procurement procedures and operations have not been certified by EDA and/or do not comply with the procurement standards of this document, or

(2) The scope of the work as approved in the EDA grant award has changed, or

(3) The proposed bid documents specify one or more "brand name" products.

D. A pre-award review by EDA is required if:

(1) The procurement is expected to exceed the simplified acquisition threshold (currently \$100,000) and is to be awarded without competition after one bid or offer is received in response to a solicitation, or

(2) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement, or

(3) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold, or

(4) The Recipient's procurement procedures or operation fails to comply with the procurement standards in this Requirement for Approved Construction Projects, or

(5) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product.

E. It will greatly expedite EDA's review of the proposed bid documents if the Recipient completes the Checklist for Construction Contracts (Exhibit A-2), has it signed by the Recipient's authorized representative and submits it to the EDA regional office with the proposed construction bid package for approval. EDA review and approval of the proposed contract documents will also be expedited if the Recipient uses standardized documents such as "Contract Documents for Construction of Federally Assisted Water and Sewer Projects" jointly prepared, endorsed

by, and available from, the Environmental Protection Agency, the Rural Development Agency, the Department of Housing and Urban Development, the Associated General Contractors of America, the Consulting Engineers Council and the National Society of Professional Engineers. Standardized contract forms available from the American Institute of Architects are also acceptable to EDA.

F. Until EDA has reviewed and approved the Recipient's proposed contracts and related procurement documents, the Recipient will be proceeding at its own risk regarding the eligibility of costs incurred.

### 12. Construction and Services Contract Provisions

A. The proposed contract documents to be part of the invitation for bids should contain at least the following:

- (1) An Index.
- (2) Advertisement for Bids.
- (3) Information for Bidders.
- (4) Bid Form.
- (5) Contract Form.
- (6) Bid Bond.
- (7) Performance Bond.
- (8) Payment Bond.
- (9) General Conditions.
- (10) "Supplemental General Conditions" (to be furnished by EDA).
- (11) Technical Specifications.
- (12) Working Drawings.
- (13) Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (E.O. 11246 and 41 CFR 60-4) (Exhibit E).

B. The package sent to EDA should also contain a documentation of the estimated cost for the proposed contract (see Section II 6. of these "Requirements for Approved Projects").

C. The Recipient shall include the following contract provisions or conditions in all procurement contracts and subcontracts for the EDA assisted project.

(1) Contracts in excess of the simplified acquisition threshold (currently \$100,000) shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) Contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination by the Recipient including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded in excess of \$10,000 by the Recipient and their contractors or subrecipients shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(4) All contracts and subgrants in excess of \$2,000 for construction or repair shall

include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public works, to give up any part of the compensation to which he/she is otherwise entitled. The Recipient shall report all suspected or reported violations to EDA.

(5) All construction contracts in excess of \$2,000 awarded by the Recipient and Subrecipients shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The Recipient shall place a copy of the current prevailing wage determination issued for each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The Recipient shall report all suspected or reported violations to EDA.

(6) Where applicable, all contracts awarded by the Recipients and Subrecipients in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of this Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

(7) Section 107 of the Contract Work Hours and Safety Standards Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(8) Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions made by Nonprofit Organizations and Small Business Firms under Grants, Contracts and Cooperative Agreements".

(9) All negotiated contracts (except those awarded by small purchases procedures) awarded by the Recipient shall include a provision to the effect that the Recipient,

EDA, the Office of Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract.

(10) The Recipient shall require contractors to maintain all required records for three years after the Recipient makes final payments and all other pending matters are closed.

(11) Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the Recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.) Violations shall be reported to EDA and the regional office of the Environmental Agency (EPA).

(12) Recipients and subrecipients must contain mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan, where applicable, issued in compliance with the Energy Policy and Conservation Act (P.L. 94-165).

(13) EDA may require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

(14) The EDA project number should appear on all drawings and on the face sheet of specification documents. In the case of a single sheet layout included in folders, the project number should be shown on the face of the sheet or at a point which will be outside when folded. If the layout consists of two or more sheets, all sheets should be so identified.

(15) In all cases, a reasonable time must be allowed to perform the work and the contract documents should stipulate the number of calendar days allowed for completing the work.

(16) EDA urges that a liquidated damage provision be included in all construction contracts with a specific dollar amount of daily damage to be assessed against the Contractor for each calendar day beyond the stipulated completion date. The daily amount of damages shall be a reasonable and adequate amount based upon the circumstances and estimated dollar cost of the individual contract, or the revenue-producing capacity of the project. The liquidated damages provision provides the Recipient with a feasible means of securing compensation for damages for delays in completing the work. Without such a provision, the proving of such damage is difficult and usually entails court action. In the event that the Recipient objects to the inclusion of a liquidated damages provision in construction contracts, a statement of the reasons for objecting should be submitted with the proposed contract documents.

(17) The Architect/Engineer should be encouraged to use deductive alternates which do not alter the scope of the project, affect the economic impact or project revenue, or change the project justification. Thus, should

the bids exceed the cost estimate, deductive alternates may be used to reduce the cost to the extent necessary to come within the approved funds. Deductive alternates, where used, must be listed in the order to be used on the bid documents and *must* be taken in that order when awarding the contract. Deductive alternates should not be used for material. EDA recommends that unit price bidding based on quantities estimated by the Architect/Engineer so as to arrive at a total base bid be used to the greatest practical degree.

(18) The limiting of materials and/or equipment to a particular manufacturer or brand name ("sole source") must have EDA approval to be eligible for reimbursement from grant funds unless an "or equal" clause is included in the equipment specifications.

(19) EDA discourages the use of performance type specifications. If the Recipient or his/her Architect/Engineer wishes to use performance type specifications, written approval must be secured from EDA.

(20) See Section II, paragraph 8 of these "Requirements for Approved Projects" for bonding and insurance requirements.

(21) Exhibit B, "Supplemental General Conditions" found in the Exhibits section of these "Requirements for Approved Projects" must be made a part of the construction bid and contract documents unless all EDA and other Federal requirements contained therein are covered elsewhere.

(22) The bidding documents should stipulate that:

a. the Recipient may consider any bid informal which is not prepared and submitted in accordance with the provision of the bid documents and may waive any informalities or reject any and all bids;

b. any bid may be withdrawn prior to the time scheduled for the opening of bids but not afterward; and

c. any bid received after the time and date specified for the bid opening shall not be considered.

(23) Stated allowances may be used for certain items such as door and/or window hardware with the approval of EDA.

(24) All of the above documents shall be included in the sets of bidding documents to be issued to prospective bidders, with any changes or additions recommended by EDA. The responsibility for complying with all State and local laws rests with the Recipient.

(25) Exhibit E to these "Requirements for Approved Projects" is a notice which provides goals and timetables for minority and female participation in construction work. This notice must be included in all invitations for bids for construction projects for which the prime contract and any related subcontracts are in excess of \$10,000. EDA shall furnish the Recipient with the appropriate goals and timetables to be inserted in the above notice. In addition, the requirements of the above notice have been provided in the "Supplemental General Conditions" (Exhibit B) as the Standard Federal Equal Employment Opportunity Construction Contract Specifications.

(26) EDA approval of plans, specifications, contract and related documents is to assure compliance with terms of the Grant

Agreement and does not imply nor attest to the accuracy or completeness of design, dimensions, details, proper selection of materials, nor compliance with required codes or ordinances. This responsibility rests with the Recipient.

(27) In the absence of State or local law to the contrary, the advertisement for bids will conform to the requirements of Section II 7 of these "Requirements for Approved Projects".

(28) Only complete sets of plans and specifications should be issued to prospective contractors and/or subcontractors.

(29) Generally, a minimum of 30 days should be allowed for submission of bids.

### 13. Wage Rates

A. Wage rates paid for labor must not be less than the prevailing area wages as determined by the Secretary of Labor and embodied in the construction contract, pursuant to the provisions of the Davis-Bacon Act, as amended (40 U.S.C. 276a to 276a-7). EDA will secure the wage determination for the Recipient based on the following.

B. Most areas of the United States are covered by existing Department of Labor (DOL) wage decisions published and updated at irregular intervals. If the Recipient's project is in a covered area, the EDA Regional Office will supply copies of the applicable wage decision upon the Recipient's request. If the area is not covered by an existing wage decision the following procedure will apply. Between 60 and 45 days prior to the anticipated date of advertising for bids, the Recipient shall send to the EDA Regional Office a request for a wage determination (also referred to as a wage decision) defining the type of construction category (Building, Heavy or Highway) with each feature of work listed under the appropriate category. In addition, the crafts or skills needed for each category shall be listed and any pertinent wage information available submitted, such as statements from the secretaries of the Association of General Contractors and the Building Trades Council having jurisdiction. In isolated communities, certified copies of current contractors' payrolls for similar type work in the area concerned may accompany the request. When a State wage determination is required by State law, the Recipient must secure a schedule of rates from the State Labor Department and incorporate both State and Federal schedules of rates in the contract documents. The Recipient is responsible for seeing that the wage rates shown in the contract documents reflect not less than the higher of the Federal or State rate by trade. EDA will secure the wage decision from the appropriate Department of Labor Regional Administrator.

C. Each feature of work scheduled must call for Building, Heavy, or Highway wage rates, if applicable. Where a proposed contract involves only one type of construction, the specifications shall so state. Where more than one type of construction is involved, the specification shall identify, as specifically as possible, into which category of construction each work item falls. This decision, made by the Recipient in consultation with the Architect/Engineer,

shall be based on local or area practice to insure fairness to all prospective bidders on construction contracts to be awarded.

D. Wage decisions are only valid for a 120-day period and extensions of wage decisions shall not be granted. If the decision expires without being superseded prior to award of contract, a new wage decision must be secured and included in the proposed contract documents prior to award. The request for a new wage decision shall be addressed to the EDA Regional Office. If the wage rate included in the Invitation for Bids is superseded, the new wage rate must be substituted if the new wage rate decision is dated over ten days prior to the bid openings; otherwise the old wage rate shall apply.

E. Contractors and subcontractors shall be advised that upon acceptance of their bids, they are obligated to pay not less than the established wage rate unless otherwise required by law. Wage rates need not be listed for non-manual workers, including executive, supervisory, administrative and clerical employees.

F. Wage rate schedules are generally not required for contracts between Recipients and railroads and other public utilities for construction services to the extent that the services are performed by personnel employed directly by the utility concerned and paid at rates prevailing for the type of work and utility concerned.

G. EDA or the Department of Labor may cause investigation to be made as may be necessary to assure compliance with the labor standard clauses required by the regulations contained in 29 CFR, Part 5 and the applicable statutes listed therein. Complaints made to, or which come to the attention of the Recipient, shall be called to the attention of the EDA Regional Office.

H. The Recipient shall require each contractor and subcontractor to submit, in compliance with the Davis-Bacon Act, a weekly payroll record. These records shall be retained for a period of three years from the date of completion of the contract and in a manner reasonably accessible. Such payroll records shall be made available at all times for inspection by EDA, the Department of Commerce Inspector General or their authorized representative, and by authorized representatives of the Department of Labor. The Recipient shall file these records by contract number. If the Recipient wishes to use another system for maintaining these records, the EDA Regional Office shall be consulted to avoid any violations of the Privacy Act. The Recipient shall check the submitted payroll records to assure they contain the following:

(1) A properly completed payroll Form WH-347, or

(2) If another form is used, all the information required by Form WH-347, including the name, address, correct job classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid for all employees; and the Statement of Compliance, properly executed as shown on the reverse side of Department of Labor Form WH-347, "Payroll Reporting Form" containing all of the information requirements including the Statement of Compliance. Copies are

available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

I. Where a construction contract has been awarded and work has commenced on the EDA approved project prior to acceptance of the Grant Award, wage rates and requirements listed herein shall be retroactive to the date of start of construction.

### 14. The Bid Opening

A. Whether or not an EDA representative is present at the bid opening, the Recipient will furnish the following to the EDA Regional Office:

- (1) a statement signed by the Authorized Representative of the Recipient, certifying that all bids were received sealed and were opened in his/her presence;
- (2) copy of official minutes of the bid opening;
- (3) a copy of the bid tabulation.

### 15. Overrun at the Bid Opening

A. If the lowest responsive bid received at the bid opening exceeds the amount of funds available to finance the contract:

- (1) the Recipient may without taking deductive alternates:
  - a. reject all bids;
  - b. augment the funds available in an amount sufficient to enable award to the lowest responsive bidder.
- (2) The Recipient may take deductive alternates in the order shown in the Invitation for Bids until at least one of the responsive bids less deductive alternates result in a price within the funds announced as available. Then award may be made to that bidder. It should be noted that this procedure may change the order of bidders and thus extra care must be exercised to insure that:
  - a. all responsive bids are considered;
  - b. deductive alternates have been taken in the exact order shown in the Invitation for Bids; and
  - c. only sufficient deductive alternates have been taken to reduce at least one of the responsive bids to or below the amount of funds announced as available.
- (3) In no event, however, should the Recipient negotiate with the low bidder or other bidders in order to reduce the cost within the funds available.

B. If the low bid less all deductive alternates exceeds the funds available, the Recipient may:

- (1) furnish the additional funds required. If the Recipient intends to finance the overrun from his/her own funds, he/she will furnish a written letter or statement to the EDA regional office affirming his/her intention to finance the overrun and indicating the source of funds. If such funds are to be borrowed an appropriate supplemental financial plan must be prepared by the Recipient; or
- (2) reject all bids and have the Architect/Engineer redesign the project, within the approved scope, to reduce the cost to, or below the approved amount and readvertise; or
- (3) request additional EDA financial assistance as a last resort. However, before the Regional Office can accept a request for additional EDA funds, it will be necessary for the Recipient to furnish the following documentation to the EDA Regional Office:



a. a written statement from the Architect/Engineer giving his/her professional opinion that redesign of the project within the approved scope or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds; and

b. a written statement from the Authorized Representative or governing body of the Recipient that the Recipient cannot furnish the additional funds required, giving the reasons plus documentation and/or statistics relative to the financial condition of the Recipient.

#### 16. Underrun Funds at the Bid Opening

A. If the total amount of construction contract awards is less than the approved line item for construction and/or any of the other line items in the EDA approved budget experiences an underrun such that the total expected actual cost will be less than the cost estimated in the EDA approved budget, EDA must be notified.

B. Underrun funds resulting from the situation described in paragraph A above may not be used to enhance or increase the scope of the project.

#### 17. EDA Approval of the Contract Award

A. EDA must review and approve the award of all necessary contracts in order for the cost to be eligible for EDA reimbursement. However, pending EDA approval the Recipient may issue the Notice to Proceed permitting the work to go forward.

B. To obtain approval of the contract award, the Recipient shall submit to the EDA Regional Office:

(1) those items listed in Section II, Paragraph 13A and 13B of these "Requirements for Approved Projects", if not furnished previously;

(2) evidence of bidder's qualification. Architect/Engineer must review and add his/her opinion of bidder's qualifications;

(3) evidence of publication of advertisement for bids;

(4) certified evidence of the Recipient's ability to provide the financial participation required by the Grant Agreement;

(5) evidence of ability to provide construction financing;

(6) evidence of ability to provide the movable equipment and furnishings necessary to make the project a usable facility;

(7) a résumé of Resident Engineer's or Resident Inspector's qualifications for approval if not previously furnished;

(8) evidence of establishing a project accounting system for the project; and

(9) evidence of bonding of those persons authorized to draw upon the project funds as required by State and/or local law.

C. Prior to awarding any contract the Recipient should contact the EDA Regional Office so that the contractor can be checked against the list of contractors debarred, ineligible, or suspended from dealing with the Federal government or indebted to the United States. Costs for work done by such contractors are ineligible for EDA financial participation.

#### 18. Executed Bid Award

A. After the bid award has been made, if EDA requests it, the Recipient will submit to EDA one set of bound executed contract documents. Each set shall consist of:

(1) all documents furnished the bidder prior to receipt of bids and upon which base bids were submitted;

(2) a signed or certified copy of the contract or agreement executed between the Recipient and the Contractor, including all addenda as issued, with necessary blanks completed;

(3) a copy of performance and payment bonds, dated the same date or subsequent to the date of the contract, supported by a properly signed and dated power of attorney, issued by the Surety. The Surety must be authorized to transact a fidelity and surety business in the State where the project is located and must be on the Treasury Department's current Circular 570, as "Companies Holding Certificate of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies". The underwriting limitations provided for in the said Treasury Department listing shall be applicable. A bound set of final plans are to be submitted with each set of contract documents.

(4) copies of insurance policies and/or certificates described in paragraph 5 of Section III of these "Requirements for Approved Projects".

#### 19. Preconstruction Conference

Before the start of construction, an EDA representative may arrange to meet with the Recipient, the Architect/Engineer, and the Prime Contractor(s) to discuss EDA requirements on such matters as project supervision, on-site inspections, progress schedules, reports, payrolls, payments to contractors, contract change orders, insurance, safety, and other items pertinent to the project. At this conference, all parties shall be prepared to discuss any anticipated problems or issues that could affect the timely completion of the project.

### Section III—Construction Procedures

#### 1. Recipient Responsibilities

A. The Recipient is responsible for expeditiously prosecuting the project to completion, for monitoring project progress, for keeping EDA advised of project progress, for adequate construction inspection, for prompt payment of costs incurred for the project and for monitoring the contractor's compliance with local, State and Federal construction requirements.

B. The Recipient, with the assistance of its architect/engineer, is responsible for the accuracy and completeness of the plans, specifications and other contract documents. The Recipient, with the assistance of its architect/engineer, is responsible for the accuracy and completeness of the design, dimensions, details, proper selection of materials, and compliance with applicable building codes or ordinances. EDA review of proposed and/or final contract documents does not in any way relieve the Recipient of the foregoing responsibilities.

#### 2. Employment of Local Labor

A. The maximum feasible employment of local labor shall be made in the construction of EDA assisted public works projects. The Recipient should supply a list of the successful bidder's anticipated labor requirements to the applicable Federal/State Employment Office far enough in advance of the start of construction so that the employment office may provide the contractor with the names of suitable local personnel from its rolls.

B. The contractor shall be required to include the above requirement in every subcontract for all work on the EDA assisted project.

#### 3. Construction Progress Schedule

A. If requested by EDA, the Recipient will secure from the contractor or Architect/Engineer, and furnish a copy to EDA, of the predicted construction progress chart and a schedule of amounts for contract payments.

B. The construction progress chart should be updated monthly by the Recipient, the Architect/Engineer or the contractor. A copy for each month will be attached to the Quarterly Performance Report. The EDA Regional Office will advise as to the content of the report. The report will be due quarterly throughout the construction of the project.

C. After a review of the project the EDA project manager may discuss with the Recipient, or the Recipient's representative, the appropriate type of progress chart. The bar graph type of chart will generally be acceptable but some type of network analysis may be more appropriate for projects with cost in excess of \$1 million and with greater than average complexity. The cost for such network analysis may be an eligible project cost if EDA approves its use.

#### 4. Construction Sign

A. The Recipient shall require the prime contractor to secure or construct, erect, and maintain in good condition throughout the construction period, a sign or signs, (specifications for the sign are included as an exhibit to this document), at the project site in a conspicuous place indicating that the Federal government is participating in the project. EDA may require more than one sign if site conditions so warrant.

B. Project signs will not be erected on public highway rights-of-way.

C. Location and height of signs will be coordinated with the agency responsible for highway or street safety in the area if any possibility exists for obstruction to traffic line of sight.

D. Whenever EDA site sign specifications conflict with State law or local ordinance, the EDA regional director may modify such conflicting specifications so as to comply with the State law or local ordinance.

E. When appropriate, EDA may require that a bilingual project sign be used. Specifications for such a sign are contained in this document in Exhibit B.

#### 5. Inspection of Construction

The Recipient must provide competent project inspection during the construction period. The inspector may be an employee of the Recipient, an employee of the architect/



engineer, or a person(s) under contractual control of the Recipient. The extent of the inspection and the selection of the inspector must be approved by EDA. Pertinent information regarding the proposed inspector's experience, qualifications, salary plan and the scope of his responsibilities and authorities shall be furnished to EDA for this purpose.

#### 6. Occupancy Prior to Completion

A. If the project or any part of it is to be occupied or used prior to its acceptance from the contractor, the Recipient must:

(1) notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use;

(2) secure the written consent of the contractor;

(3) secure an endorsement from the insurance carrier and consent of the surety permitting occupancy or use during the period of construction; and.

(4) secure permanent fire and extended coverage insurance, where applicable, including a permit to complete construction.

B. EDA may require from the Recipient an assurance to protect the EDA investment in the project, prior to the approval of occupancy and/or use of all or any part of the project before completion of the construction.

#### 7. Contractor Payrolls

A. Each contractor and subcontractor must be required by the Recipient to maintain weekly payroll records. These records are to be retained for a period of three years from the date of project closeout. Each contractor and subcontractor must also be required to furnish a copy of each payroll to the Recipient. The Recipient is responsible to assure that the payrolls meet the following standards:

(1) Wage rates and fringe benefits paid agree with the Department of Labor wage rate, or State wage rates if they are higher.

(2) Name, address, and Social Security number and work classification is shown for all employees.

(3) The Certificate of Prime Contractor on the reverse side of the Form WH-347 has been properly executed. If EDA has approved a substitute form for the WH-347 the substitute form must contain the certification as well as all of the above standards.

B. EDA may require that copies of the weekly payroll records be furnished to the applicable EDA regional office.

#### 8. Civil Rights Requirements

The regulations issued under Executive Order 11246 (41 CFR 60-1.7) require the submission of compliance reports regarding civil rights. Standard Form 100 is to be used for this purpose. The requirement applies to any person or entity subject to Executive Order 11246 who:

(1) has 50 or more employees; and

(2) is a prime contractor or first-tier subcontractor; and

(3) has a Federally assisted contract, subcontract or purchase order amounting to \$50,000 or more.

#### 9. Contract Change Orders

A. After the construction contracts have been executed, it may become necessary to

alter them. This requires a formal contract change order, issued by the Recipient and accepted by the contractor. All contract change orders must be concurred in by EDA even if the Recipient is to pay for all additional costs resulting from the change or the contract price is to be reduced. The work on the project may continue pending EDA review and concurrence in the change order but the Recipient should be aware that all such work is at the Recipient's risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received for the change order.

B. The Recipient or its architect/engineer shall perform a cost or price analysis in connection with every change order which affects the contract price.

C. Proposed contract change orders will be prepared by the Recipient in sufficient quantity that two copies can be furnished to EDA for concurrence. Necessary supporting statements, estimates, specifications, and plans will be attached. Before submission to the EDA regional office, the change order must be signed by the Recipient, the Architect/Engineer, and the contractor. The Recipient will be notified in writing of EDA concurrence if the change order is acceptable to EDA.

D. EDA will not approve change orders which change the purpose and intent (the scope) of the project. Change orders that add minimally or incidentally to the cost of the project but do not change the project scope may be approved by EDA provided that either:

(1) the Recipient has agreed in writing to fund the additional cost, in which case all work involved in the accomplishment of the change order will be an ineligible project cost and no EDA funds will be used to pay for it; or

(2) there are sufficient funds remaining in the project budget to cover the change order without jeopardizing the completion of the project.

E. EDA will not approve EDA financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the EDA approved project budget. EDA approval of change orders must be based on a finding by EDA that the work called for in the change order *is within the project scope* and is necessary for the proper functioning of the project.

F. Normally change orders should be submitted to EDA for approval as the changes occur.

G. Unit prices are often used as a basis on which to make a contract award. In addition, they may be used for establishing actual costs where actual quantities differ from estimated quantities. When actual quantities differ substantially from those estimated quantities upon which the contractor's bid was based, a "substantial variation" results. A substantial variation is usually considered to be for actual quantities in excess of 115% to 120% or less than 85% to 90% of the estimated quantities. Substantial variations will normally require a change order to the contract whether or not a change in unit price is involved. Any increase in quantity

which will result in an overall project cost overrun will require a change order to the contract. Any change to a unit price shown in the contract documents will require a change order to the contract.

#### 10. Inspection for Final Acceptance

A. A final inspection will be scheduled by the Recipient when all construction has been completed, the architect/engineer has accomplished his/her final inspection and all deficiencies have been corrected. The project must be complete and functional before the final inspection is performed.

B. The final inspection will be made by representatives of the Recipient, the architect/engineer and the contractor(s). EDA must be given advance notice of the final inspection so that an EDA representative may participate, at the option of EDA.

#### 11. Specific Requirements for Subcontractors

A. The Recipient is responsible to ensure that the contractor(s) causes appropriate provisions to be inserted in all subcontracts to bind subcontractors to EDA contract requirements as contained herein, in 15 CFR Part 24, or in 15 CFR Part 14 as appropriate.

B. Each subcontractor must agree to comply with all applicable Federal, State, and local requirements in addition to those set forth in this section.

C. Prior to the approval of any subcontract EDA will check the proposed subcontract against the listing of contractors debarred, ineligible, suspended or indebted to the United States from contractual dealings with Federal government departments. The work performed by any such contractor or subcontractor will be ineligible for reimbursement wholly or partially from EDA grant funds.

D. All subcontracts in excess of \$10,000 shall include, or incorporate by reference, the equal opportunity clause of Executive Order 11246.

E. All subcontracts must contain a nondiscrimination clause.

F. Each subcontract must contain a requirement for compliance with the Davis-Bacon and related acts.

G. Each subcontractor must submit weekly payroll records and a weekly statement of compliance. These documents should be submitted to the prime contractor. The subcontractor can satisfy this requirement by submitting a properly executed Department of Labor Form WH-347.

H. Each subcontract with every subcontractor must contain a clause committing the subcontractor to employment of local labor to the maximum extent possible.

I. The Standard Terms and Conditions of the grant agreement impose other requirements which the Recipient will be required to have the prime contractor impose on the subcontractor.

J. All subcontractors who meet the conditions set forth in Paragraph 9B of this Section III must submit a completed Standard Form 100 by March 30 of each year.

K. Subcontractors performing work in areas covered by published goals for minorities will be required to report monthly on Form CC-257.

## 12. Safety

A. All contractors on EDA assisted projects are required to perform their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). The Recipient or its Architect/Engineer should periodically check the contractor's compliance.

B. The Recipient shall notify EDA of all serious accidents and/or injuries that occur on the EDA assisted project.

## Section IV—Financial Administration

### 1. Standards for Financial Management Systems

A. A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its Subrecipients and cost-type contractors, must be sufficient to:

(1) Permit preparation of reports required by this document and applicable regulations and statutes cited herein, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

B. The financial management systems of other Recipients must meet the following standards:

(1) Financial reporting: Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) Accounting records: Recipients must maintain records which adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) Internal controls: Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Recipients must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) Budget controls: Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) Allowable costs: Applicable OMB cost principles, agency program regulations, and the terms of grant agreements will be followed in determining the reasonableness, allowableness, and allocability of costs.

(6) Source documentation. Accounting records must be supported by such source

documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by Recipients must be followed whenever advance payment procedures are used. When advances are made by electronic transfer of funds methods, the Recipient must make drawdowns as close as possible to the time of making disbursements.

C. EDA may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time subsequent to award.

### 2. Grant Disbursements

A. Reimbursement. Reimbursement is the preferred method of grant disbursement. EDA will not use the percentage of completion method to pay construction grants. The Recipient may use that method to pay its construction contractor. However, EDA's payments to the Recipient will be based on the Recipient's actual rate of disbursement.

B. Effect of program income, refunds, and audit recoveries on payment. Recipients shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional grant disbursements.

C. Withholding payments. EDA will not withhold payments for proper charges incurred by Recipients unless—

(1) The Recipient has failed to comply with grant award conditions, or

(2) The Recipient is indebted to the United States.

Cash withheld for failure to comply with grant award conditions, but without suspension of the grant, shall be released to the Recipient upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with the section on enforcement contained in this document.

EDA will not make payment to Recipients for amounts that are withheld by Recipients from payment to contractors to assure satisfactory completion of work. Payments shall be made by EDA when the Recipients actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

D. Cash depositories. Consistent with the national goal of expanding the opportunities for minority business enterprises, Recipients are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230. EDA will not require the Recipient to maintain a separate bank account unless required by Federal-State agreement.

E. Interest earned on advances.

(1) For entities subject to 15 CFR Part 24: Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), Recipients shall promptly, but at least quarterly, remit interest earned on advances

to EDA. The Recipient may keep interest amounts up to \$100 per year for administrative expenses.

(2) For entities subject to 15 CFR Part 14 and any DOC rule implementing such Circular: Entities not subject to the Cash Management Improvement Act may keep up to \$250 for administrative costs, to be remitted annually.

### 3. Allowable Costs

A. Limitation on use of funds. Grant funds may be used only for:

(1) The allowable costs of the Recipients, and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the Recipient.

B. Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

TABLE 1.—COST PRINCIPLES

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122
Educational institutions.	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to EDA.

### 4. Period of Availability of Funds

A. Generally, the maximum period for any EDA financial assistance that is provided is not more than 5 years from the end of the fiscal year of the award. Normally, costs incurred after the end of the funding period will not be eligible for reimbursement from the EDA grant.

B. Liquidation of obligations. A Recipient must liquidate all obligations incurred under the award not later than 90 days after the acceptance of the project from the construction contractor or before the end of the funding period, whichever occurs earlier.

### 5. Matching or Cost Sharing

A. Acceptable Costs and Contributions: With the qualifications and exceptions listed on the next page of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the Recipient, or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

#### B. Qualifications and exceptions:

(1) Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a Recipient or Subrecipient from a contract awarded under another Federal grant.

(2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) Cost or contributions counted towards other Federal costs-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) Costs financed by program income. Costs financed by program income, as defined in the following section on program income, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement.

(5) Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) Records. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of Recipients or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) Special standards for third party in-kind contributions.

a. Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for

them, the payments would be allowable costs.

b. Some third party in-kind contributions are goods and services that, if the Recipient, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the Recipient, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

c. A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(i) An increase in the services or property provided under the contract (without additional cost to the Recipient or Subrecipient), or

(ii) A cost savings to the Recipient or Subrecipient.

d. The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

#### C. Valuation of Donated Services:

(1) Volunteer services. Unpaid services provided to a Recipient by individuals will be valued at rates consistent with those ordinarily paid for similar work in the Recipient's organization. If the Recipient does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a Recipient, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph A of this section applies.

#### D. Valuation of Third Party Donated Supplies and Loaned Equipment or Space:

(1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

E. Valuation of Third Party Donated Equipment, Buildings, and Land: If a third party donates equipment, buildings, or land, and title passes to a Recipient or Subrecipient, the treatment of the donated property will depend upon the purpose of the grant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant is to assist the Recipient in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, the following paragraphs of this section apply:

a. If approval is obtained from EDA, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost-sharing or matching. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

b. If approval is not obtained under the above paragraph, E(2)b no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the Recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in OMB Circulars A-87, A-21 and A-122, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

F. Valuation of Recipient Donated Real Property for Construction/Acquisition: If a Recipient donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost-sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

G. Appraisal of Real Property: In some cases it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, EDA may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the Recipient.

### 6. Program Income

A. General. Recipients are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Program income does not normally include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

B. Definition of program income. Program income means gross income received by the Recipient directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

C. Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incidental to the generation

of program income may be deducted from gross income to determine program income.

D. Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a Recipient are not program income unless the revenues are specifically identified in the grant agreement as program income.

E. Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a Recipient is program income only if the revenues are specifically identified in the grant agreement as program income.

F. Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of Section VII of these "Requirements for Approved Projects".

G. Use of program income. Program income shall be deducted from outlays which may be both Federal and non-federal as described below, unless the grant agreement specifies another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between sources, kinds, or amounts of income. Alternative uses include:

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless EDA authorizes otherwise. Program income which the Recipient did not anticipate at the time of the award shall be used to reduce the EDA and Recipient contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by EDA and the Recipient. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

H. Income after the award period. Income earned beginning at the end of the award period (see Paragraph 4A of this Section IV) and ending at the end of the useful life of the project shall be used only for the following purposes:

(1) To satisfy any debt service (mortgage payments) existing during this time period. Note that any new encumbrances on the EDA assisted facility during this period must have EDA approval.

(2) For necessary operation, maintenance and repair services.

(3) Any excess above the costs of (1) and (2) above may be used for other economic development purposes in the same economic development area *with the concurrence of EDA*.

#### 7. Non-Federal Audit

A. Basic rule: Recipients and Subrecipients are subject to audit requirements contained in the Single Audit Act amendments of 1996 (31 U.S.C. 7501-7) and revised OMB Circular A-133, "Audits of State, Local Governments, and Non-Profit Organizations".

### Section V—Amendments to Grant Agreements

#### 1. General Requirements

A. Between approval and closeout of an EDA construction project, one or more changes in the project may be necessary to resolve unforeseen problems or remove obstacles to the project's successful completion. In most instances, the proposed change can be effected only through a formal amendment to the project.

B. Project amendments generally fall into the following categories.

- (1) Time extensions;
- (2) Budget revisions;
- (3) Additional funding (overrun);
- (4) Permitted waiver of EDA regulations;
- (5) Changes which do not involve overall funding (e.g., change of Recipient; method and schedule of financing; addition, deletion, or change affecting a line item in the approved project cost estimate);
- (6) Change to the Special Conditions of the Grant Award;
- (7) Termination (for cause or by mutual consent).

C. A change-of-scope determination may be necessary before a decision can be made if the requested change involves a change to the purpose, bona fide need, nature or community served of the project.

#### 2. Changes to the Project Scope

A. Project scope is defined as the purpose, bona fide need, nature and community served of the approved grant. A project amendment which amounts to a change of scope is, in fact, the substitution of one grant for another. A change of scope modification to a project which was funded in a prior fiscal year cannot be approved by EDA. Modifications to projects funded from the current fiscal year's appropriation, or from a no-year appropriation, do not constitute a prohibited change of scope but must have the written approval of EDA. Any proposed change to an EDA assisted project which is a change of scope will be disapproved by EDA.

B. Certain types of project modifications can be approved by EDA if specified findings can be made. These include time extensions for commencement or completion of work, waivers of certain EDA requirements and some types of budget line item changes.

C. Certain types of project modifications presumptively constitute a change of scope, although the facts of a particular situation could permit such modifications to be approved. Examples are:

- (1) A change of Recipient;
- (2) A change of project location;
- (3) Addition of a new line item to the EDA approved budget;
- (4) An expansion of the activity associated with a budget line item.

D. Every proposed modification to a grant shall be considered not only in the light of the foregoing policy on change of scope, but shall also be processed in accordance with all EDA legal and technical requirements so that grants as amended will not deviate from the standards employed in initial grant approval.

#### 3. Time Extensions

A. The Recipient is responsible for expeditiously prosecuting the implementation of the project in accordance with the project development time schedule contained in the EDA grant award. As soon as the Recipient becomes aware that it will not be possible to meet the time schedule, it must notify the EDA Regional Office. The Recipient's notice to EDA should contain the following information.

(1) An explanation of the Recipient's inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor's ability to excavate the site; major re-engineering required in order to obtain state or Federal approvals; or unplanned environmental mitigation required).

(2) A statement that no other changes to the project are contemplated;

(3) Documentation that demonstrates there is still a bona fide need for the project; and

(4) A statement that no further delay is anticipated and that the project can be completed within the revised time schedule.

B. EDA will advise the Recipient if a formal written request from the Recipient for a time extension will be required. The Recipient should be aware that grant disbursements may be suspended while the Recipient is not in compliance with the time schedule.

C. EDA reserves the right to suspend and/or terminate any grant if the Recipient fails to proceed with reasonable diligence to accomplish the project as intended.

#### 4. Budget Line Item Revisions

A. The tabulation of estimated project costs contained in the EDA Grant Award is the controlling budget for the project. Budget line item revisions which do not involve a change of scope may be approved by EDA if:

- (1) no new EDA funds are involved; and
- (2) another budget line item (preferably the contingency line item, although this is not mandatory) has funds which can be used without significantly adversely affecting the object of that line item; and

(3) unless the line item which is proposed to be supplemented is supplemented, the activity associated with that line item cannot be completed; and

(4) no new line items are being added to the budget.

B. Funds may be transferred to other approved budget line items from the contingencies line item provided the activity associated with the line item cannot be completed unless the line item to be supplemented is supplemented.

C. The transfer of funds from line items other than the contingencies line item may be permitted with EDA written permission provided there will be no significant adverse effect to the object of the line item from which the transfer is to be made.

D. The construction line item shall be revised at the time of contract award to reflect the actual contract amount(s). Underrun amounts shall be transferred to the contingencies line item. Recipients are reminded that contingency funds are only to be used to cover situations resulting from unknown conditions and changes required

for the fulfillment of the previously authorized project activities intended under the grant award. Underrun funds cannot be used to change the scope of the project.

E. The Recipient shall notify EDA of any proposed transfer of funds from one budget line item to another.

#### 5. Additional EDA Funding

A. In accepting the award of an EDA grant the Recipient agreed to fund any overrun(s). Additional EDA funding for an approved project is unlikely to be approved. To be considered for approval it must compete with other requests for scarce EDA funds. If an overrun occurs as a result of the construction contract bid opening, before EDA will accept a formal request for additional EDA funds it will be necessary for the Recipient to furnish the following documentation to EDA:

(1) A written statement from the Recipient's Architect/Engineer giving reasons for his professional opinion that redesign of the project within the approved scope, or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds.

(2) A written statement from the administrative head of the Recipient's organization justifying why the Recipient cannot furnish the additional funds required. Relevant data may be in the form of an audit performed within the past two years, schedule of bonded debt, assessed property values as a percentage of market value, tax rates, and percent of collection. The statement should state why non-EDA sources of funds cannot be used.

B. Acceptance by EDA of a request for additional EDA assistance does not indicate approval. Any further action by the Recipient pending EDA's review of the Recipient's request is at the Recipient's risk.

#### 6. Termination of the EDA Grant

##### A. Termination for Cause

(1) If a Recipient materially fails to comply with any term of a grant award, whether stated in a Federal statute, regulation, assurance, grant application, or notice of award, EDA may take one or more of the following actions, as appropriate in the circumstances:

a. Temporarily withhold disbursement of grant funds pending correction of the deficiency by the Recipient, or more severe enforcement action by EDA;

b. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

c. Wholly or partly suspend or terminate the current award;

d. Withhold further awards for the project or program;

e. Take other remedies that may be legally available.

(2) In taking an enforcement action, EDA will provide the Recipient an opportunity for such hearing, appeal, or other administrative proceeding to which the Recipient is entitled under any statute or regulation applicable to the action involved.

(3) Costs resulting from obligations incurred by the Recipient after notice by EDA of suspension of, or termination of, the grant, are not allowable unless EDA expressly

authorizes them in the notice of suspension or intent to terminate, or subsequently. Other Recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

a. The costs result from obligations which were properly incurred by the Recipient before the effective date of the suspension or termination, are not in anticipation of it, and in the case of termination, are noncancellable; and,

b. The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(4) The enforcement remedies identified in this section, including suspension and termination, do not preclude Recipient from being subject to "Debarment and Suspension" under E.O.s 12549 and 12689 and implementing regulations at 15 CFR Part 26.

##### B. Termination for Convenience

(1) Terminations for convenience have the following requirements:

a. EDA may propose the termination for convenience, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or

b. The Recipient may propose the termination to EDA in writing, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, EDA determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, EDA may terminate the grant in its entirety under the termination for cause procedures or termination for convenience procedures with the consent of the Recipient. An appropriate official of the Recipient may request EDA to cancel or terminate a project. This request must be accompanied by a certified resolution or ordinance authorizing the requesting party to make such request. EDA will determine the legal sufficiency of such request.

#### Section VI—Project Closeout Procedures

##### 1. Audit Requirements

A. Recipients are subject to audit requirements contained in the Single Audit Act of 1984, and the amendments of 1996, (31 U.S.C. 7501-7) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations". If the Recipient has no current audit performed in accordance with the Single Audit Act, EDA will advise the Recipient of the procedure for securing the required audit.

B. Normally, if the Recipient has had an audit in accordance with the Single Audit Act within the prescribed period, EDA will not require a project specific audit. However, if the documentation supplied by the Recipient is inadequate for a determination by EDA of the eligibility of claimed costs for reimbursement from the EDA grant, EDA may require such a project specific audit. EDA reserves the right to: (1) require the Recipient to secure an independent audit of the project

cost, or (2) conduct an audit of project costs using Department of Commerce auditors, and (3) recover any costs previously allowed for EDA reimbursement but found by the audit to be not allowable.

C. From time to time the Department of Commerce Office of the Inspector General selects an EDA assisted project for audit. If its project is one of those selected, the Recipient will be notified in advance.

D. In arranging for audit services, Section II, Contracting for Project Construction will be followed. An independent audit arranged by the Recipient must meet the standards of the Comptroller General publication, "Standards for Audit of Government Organizations, Programs, Activities, and Functions".

##### 2. Closeout Procedures

A. When project construction is complete, the final inspection has been completed, and the Recipient has accepted the project from the contractor, the Recipient can begin the closeout process. This should include notifying EDA of the following actions:

(1) Compliance with all Special Conditions of the EDA grant award, including but not limited to the following:

(2) Securing permanent insurance for above ground facilities.

(3) Results of a review of the project to determine that all changes to the project have been brought to the attention of EDA.

(4) Provisions have been made for the retention for three years of all records pertaining to the project.

(5) Certificate of Final Completion has been prepared, executed and a copy furnished to EDA.

(6) As-built drawings have been received from the contractor and/or the architect/engineer.

(7) A copy of a current Single Audit Act audit of the Recipient has been furnished to EDA. If no Single Audit Act audit is available but is required, the Recipient's plan to secure the audit has been furnished to EDA and approved. If no Single Audit Act audit is required, EDA has been advised and has determined whether an independent audit will be required.

(8) To the knowledge of the Recipient there are no outstanding Davis-Bacon or local labor employment violations.

(9) EDA has been notified of any change, lien, mortgage or other encumbrance relating to the ownership of the project.

(10) EDA has been notified of any unresolved contract/contractor disputes.

(11) If required, a lien or Covenant of Purpose, Use, and Ownership in favor of EDA has been executed and recorded.

(12) A record will be maintained by the Recipient of the useful life of the facility as determined by EDA during which period the Recipient may not alienate its ownership or change the use and purpose of the EDA assisted facility without EDA's written permission.

B. Recipients shall submit, within 90 calendar days after the completion of the project, all financial, performance and other reports as required by the terms and conditions of the grant award.

C. Unless EDA authorizes an extension, the Recipient shall liquidate all obligations

incurred under the grant award no later than 90 calendar days after the funding period or the date of completion, whichever is earlier, as specified in the terms and conditions of the award.

D. When EDA is satisfied that the audit requirement has been met and the actions discussed in paragraphs A, B, and C above have been accomplished, the Recipient may request the final grant disbursement. The request will be prepared on EDA Form ED-113, Outlay Report and Request for Reimbursement for Construction Programs. EDA may assist with filling out the form but it is the responsibility of the Recipient to assure that the numbers on the form are correct. The following documentation should accompany the executed form ED-113 when it is sent to the EDA Regional Office unless the documentation has been previously furnished:

- (1) Copies of all executed contracts, subcontracts (if claimed separate from the prime contract), contract change orders, vouchers, canceled checks, and other evidence of costs incurred necessary to substantiate the costs claimed on the Form ED-113;
- (2) A copy of the currently valid Single Audit Act audit if one was performed;
- (3) Payroll forms, if any of the cost claimed is for work performed by in-house work forces
- (4) Payroll Compliance Certificate;
- (5) Civil Rights documents;
- (6) Title opinions, legal descriptions, bills of sale, title records, etc., for any land cost being claimed; and
- (7) Specifics of any administrative costs being claimed.

E. The Recipient will be advised by EDA of costs found eligible, costs found ineligible and the reasons for findings of ineligibility. If a balance of the grant is due to the Recipient, the balance will be paid by electronic transmittal. If the Recipient has received a grant amount in excess of the amount due the Recipient, the Recipient will be requested to refund the excess to EDA payable to the U.S. Treasury.

F. The closeout of an award does not affect any of the following:

- (1) The right of EDA to disallow costs and recover funds on the basis of a later audit or other review.
- (2) The obligation of the Recipient to return any funds due as a result of later refunds, corrections, or other transactions.
- (3) Requirements for property management, records retention and performance measurement reports.
- (4) Audit requirements.

## Section VII—Post Construction Grant Requirements

### 1. Real Property

A. All property that is acquired or improved with EDA grant assistance shall be held in trust by the grantee for the benefit of the project purposes under which the property was acquired or improved.

B. During the estimated useful life of the project, EDA retains an undivided equitable reversionary interest in property acquired or improved with EDA grant assistance.

C. EDA may approve the substitution of an eligible entity for a grantee. The original grantee remains responsible for the period it was the grantee, and the successor grantee holds the project property with the responsibilities of an original grantee under the award.

D. The requirements contained in this part apply solely to grant and cooperative agreement award projects.

### 2. Definitions

A. As used in this Section VII:

(1) *Dispose* includes sell, lease, abandon, or use for a purpose or purposes not authorized under the grant award or this part.

(2) *Estimated useful life* means that period of years from the time of award, determined by EDA as the expected life-span of the project.

(3) *Grantee* includes any recipient, subrecipient, awardee, or subawardee of grant assistance under the Public Works and Economic Development Act of 1965.

(4) *Owner* includes fee owner, transferee, lessee, or optionee of real property upon which project facilities or improvements are or will be located, or real property improved under a project which has as its purpose that the property be sold.

(5) *Personal Property* means all property other than real property.

(6) *Project* means the activity and property acquired or improved for which a grant is awarded. When property is used in other programs "project" includes such programs.

(7) *Property* includes all forms of property, real, personal (tangible and intangible), and mixed.

(8) *Real property* means any land, improved land, structures, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of such land as a specific part of the project purpose.

### 3. Use of Property

A. The grantee or owner shall use any property acquired or improved in whole or in part with grant assistance only for the authorized purpose of the project as long as it is needed during the estimated useful life of the project and such property shall not be leased, sold, disposed of or encumbered without the written authorization of EDA.

B. In the event that EDA and the grantee determine that property acquired or improved in whole or in part with grant assistance is no longer needed for the original grant purpose, it may be used in other Federal grant programs, or programs that have purposes consistent with those authorized for support by EDA, if EDA approves such use.

C. When the authorized purpose of the EDA grant is to develop real property to be leased or sold, as determined by EDA, such sale or lease is permitted provided the sale is consistent with the authorized purpose of the grant and with applicable EDA requirements concerning, but not limited to, nondiscrimination.

D. When acquiring replacement personal property of equal or greater value, the grantee may trade in the property originally acquired or sell the original property and use the proceeds in the acquisition of the replacement property, provided that the replacement property shall be used for the project and be subject to the same requirements as the original property.

### 4. Unauthorized Use

A. Except as provided in 3B, 3C, or 3D above, whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of without the approval of EDA, or no longer used for the authorized purpose of the project, the Federal Government shall be compensated by the grantee for the Federal share of the value of the property; provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 CFR Part 24 and 15 CFR Part 14 or any supplements or successors thereto, as applicable, shall apply.

B. If property is disposed of without approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. EDA may pursue its rights under both paragraphs A and B of this section, except that the total amount to be recovered shall not exceed the Federal share, plus costs and interest.

### 5. Federal Share

A. For purposes of this Section, the Federal share of the value of property is that percentage of the current fair market value of the property attributable to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale).

B. Where the grantee's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor shall be considered in determining the percentage of the Federal share.

C. If property is transferred from the grantee to another eligible entity, as provided in paragraph 1C above, the Federal Government shall be compensated the Federal share of any money paid by or on behalf of the successor grantee to or for the benefit of the original grantee, provided that EDA may first permit the recovery by the original grantee of an amount not exceeding its investment in the project nor exceeding that percentage of the value of the property that is not attributable to the EDA participation in the project.

D. When the Federal Government is compensated for the Federal share of the value of property acquired or improved in whole or in part with grant assistance, EDA has no further interest in the ownership, use or disposition of the property.

### 6. Encumbrances

A. Except as provided in paragraph 6C below, grantee-owned property acquired or improved in whole or in part with grant assistance may not be used to secure a mortgage or deed of trust or otherwise be

used as collateral or encumbered except to secure a grant or loan made by a State or Federal agency or other public body participating in the same project.

B. Encumbering such property other than as permitted in this section is an unauthorized use of the property requiring compensation to the Federal Government as provided in paragraphs 4 and 5 above.

C. EDA may waive the provisions of paragraph 6A above for good cause when EDA determines all of the following:

(1) All proceeds from the grant/loan to be secured by the encumbrance on the property shall be available only to the grantee, and all proceeds from such secured grant/loan shall be used only on the project for which the EDA grant was awarded or on related activities of which the project is an essential part;

(2) The lender/grantor would not provide funds without the security of a lien on the project property; and

(3) There is a reasonable expectation that the borrower/grantee will not default on its obligation.

D. The EDA Assistant Secretary or his/her designee may waive the provisions of paragraphs A and B above as to an encumbrance on property which is financed by an EDA construction grant when he/she determines that the encumbrance arises solely from the provisions of a pre-existing water, sewer or other utility encumbrance which by its terms extends to additional property connected to such facilities. EDA's determination shall make reference to the specific requirements (for example, "water system and all accessions, additions or improvements thereto") which extend the terms of the pre-existing encumbrance to the property which is financed and/or improved by the EDA construction grant.

#### 7. Civil Rights Restriction

Among other applicable requirements, the Recipient or in the case of a transfer, the transferee, of real property, structures or improvements thereon or interests therein acquired, leased, or improved with EDA assistance may not sell, lease, or otherwise make any part of such premises available for occupancy by any person, firm, or entity unless the Recipient includes in the instrument effecting the sale, lease or transfer a covenant running with the land that assures that the purchaser, lessee or occupant will comply with the nondiscrimination provisions of the Civil Rights Act of 1964, as amended as provided in 15 CFR 8.5(b)(5)(6) and (11).

#### 8. Performance Reports

The Government Performance and Results Act of 1993 (GPRA) requires EDA to report the outputs and outcomes of projects (e.g. actual job creation). Recipients are required to submit reports of performance to EDA at the intervals stated in Section I Paragraph 2E of these Requirements for Approved Construction Projects.

#### 9. Record Retention

Architect/engineering records and payroll records relating to the project must be

retained as described in Section I Paragraph 6 F, Section II Paragraph 14 H, and Section III Paragraph 9 A.

#### 10. Program Income Earned After the Award Period

The uses for program income earned after the award period are described in Section IV 6 H.

#### Section VIII—Exhibits

This section contains a copy of the Exhibits cited elsewhere in this Volume and other items which may be helpful to the Recipient as it proceeds through project design, construction, and closeout. The EDA forms shown as exhibits herein are updated and revised as new procedures and requirements become known. Thus, the exhibit may not be the latest version of the form currently in use. The Recipient should check with the EDA regional office to be sure the correct form is being used before the initial use of any of the exhibits. The documents marked with an asterisk (\*) are available from the EDA regional office, if needed.

##### A. Checklists for:

- (1) Architect/Engineer Contracts
- (2) Construction Contracts
- (3) Initial Grant Disbursement
- (4) Project Closeout

##### B. Supplemental General Conditions

##### C. Certificate as to Project Site, Rights-of-Way, and Easements (Form ED-152)

##### D. \*Sample Agreement and Mortgage

##### E. Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (E.O. 11246)

##### F. \*Sample Contract Documents

- (1) Advertisement for Bid
- (2) Information for Bidders
- (3) Bid for Lump Sum or Unit Price Contracts
- (4) Bid Bond
- (5) Agreement (Construction Contract)
- (6) Performance Bond
- (7) Payment Bond
- (8) General Conditions
- (9) Contractor's Application for Payment (AIA Document #G 702)
- (10) Weekly Payroll Form (use Dept. of Labor's Form WH-347)
- (11) Notice of Award
- (12) Notice to Proceed
- (13) Change Order

##### G. Recipient's Outlay Report and Request for Reimbursement for Construction Programs (Form ED-113)

##### H. ACH Vendor/Miscellaneous Payment Enrollment Form (Form SF-3881)

##### I. Sample Final Acceptance Inspection Report

##### J. Sample Quarterly Performance Report

##### K. Sample Architect/Engineer's Certificate

##### L. Sample Certificate of Grantee/Borrower's Attorney

##### M. Information Required for EPA Certification as to Adequacy of Treatment

##### N. Financial Status Report (Form SF269)

#### Checklist for Architect/Engineer Contracts

Although the use of this checklist is not mandatory, its use will expedite EDA's review of the architect/engineer contract.

When completed by the Recipient it should be submitted to the EDA regional office soon after the grant award is approved by EDA and accepted by the Recipient if the architect/engineer contract has been previously executed. If the architect/engineer contract has not been executed prior to the Recipient's acceptance of the grant award, this checklist may be completed and sent to the appropriate regional office as soon as the architect/engineer contract is signed and prior to any request for disbursement of EDA grant funds. The appropriate responses should be circled in ink and signed by the authorized representative of the Recipient. The Recipient has written procurement procedures with which the architect/engineer contract has been found to be in compliance.

Y N The Architect/Engineer was selected competitively by sealed bids (formal advertising) or by competitive proposals. If not, attach an explanation of the selection method and the reason(s) for using that method.

Y N Requests for proposals were publicized and all evaluation factors and their relative importance were identified therein. Any response to publicized requests for proposals were honored to the maximum extent practical.

Y N Proposals were solicited from an adequate number of qualified sources (normally it is sufficient to secure at least three proposals from qualified proposers). If less than 3 qualified proposals were secured, attach an explanation to this document.

Y N The Recipient has a method for conducting technical evaluations of proposals received and for selecting the best proposal, price and other factors considered.

Y N The Recipient determined the responsible firm whose proposal was most advantageous to the program, with price and other factors considered. Competitor's qualifications were evaluated and the most qualified competitor was selected, subject to negotiation of fair and reasonable compensation.

Y N The Architect/Engineer agreement provides for all services required by the Recipient for the planning, design and construction phase of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council (ACEC), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), and/or the American Institute of Architects (AIA) may be used where the Recipient does not have standard procurement documents.



Y N	The Architect/Engineer's fee for basic services is either a fixed price or a cost reimbursement with an agreed maximum. (The amount of EDA participation will be based on a determination, subject to audit, that the fee compensation is reasonable)	Y N	If the Architect/Engineer contract(s) price exceeds \$100,000 (awarded under small purchase procedures), it includes a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, the Inspector General of the Department of Commerce, or any of their duly authorized representatives, shall have access to any documents, books, papers, and records of the Architect/Engineer (which are directly pertinent to a specific grant program) for the purpose of making an audit, examination, excerpts, and transcriptions. The Recipient shall require the Architect/Engineer to maintain all required records for at least three years after the Recipient makes final payment and all pending matters are closed.	Y N	Include in all contracts and subcontracts in excess of the small purchase threshold of \$100,000, provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;
Y N	The architect/engineer contract compensation is not based on the use of the cost-plus-a-percentage-of-cost or percentage of construction cost form of compensation. (These forms of compensation are not eligible for EDA participation).			Y N	Include in all contracts in excess of \$10,000 suitable provisions for termination by the Recipient including the manner in which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor;
Y N	The Architect/Engineer's fee covers all services necessary for the successful execution of the project, including consultations, surveys, soil investigations, supervision, travel, "as-built" or record drawings, arrow diagram (CPM/PERT) where applicable, and incidental costs.	Y N	The agreement for architect/engineer services provides an adequate basis for the Recipient to require the Architect/Engineer to:		
Y N	The basic fee does not exceed that prevailing for comparable services in the project area. If the total fee is in excess of the prevailing rate because of special services to be performed, these services are identified in the agreement. Such additional charges may be approved for grant participation by the EDA if they:	Y N	Design the project in accordance with the intent of the Grant Award;	Y N	Include in all contracts in excess of \$10,000 a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60);
	11. Do not duplicate a charge for services provided for in the basic fee and are within the normal scope of the Architect/Engineer's responsibilities;				
	12. Are a proper charge against the project cost; and	Y N	Redesign the project in the event the preliminary cost estimate, the final cost estimate, or the lowest responsive bid less deductive alterations, exceeds the funds available by an amount or percentage to be mutually agreeable to the Recipient and the Architect/Engineer;		
	c. Are reasonable for the extra services to be rendered.	Y N	Design any sewage treatment or other sewage facility so that a certificate of adequacy of treatment can be obtained as required by Section 106 of the Public Works and Economic Development Act of 1965, as amended;	Y N	Include in all contracts in excess of \$2,000 for construction or repair a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. (The Recipient shall report all suspected or reported violations to EDA).
Y N	Regardless of who furnishes the construction inspector, the agreement requires the Architect/Engineer to make sufficient visits to the project site to determine, in general, if the work is proceeding in accordance with the construction contract.	Y N	Include in all contracts and subcontracts with costs in excess of \$100,000 a provision which requires compliance with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Act (33 USC 1251 et seq., as amended). (Violations shall be reported to EDA and to the regional office of the U.S. Environmental Protection Agency).		



Y N	<p>Include in all construction contracts in excess of \$2,000 a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. A copy of the current prevailing wage determination issued by the Department of Labor must be included in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. (All suspected or reported violations shall be reported to EDA. Davis-Bacon wage determinations are not applicable to Recipient employed "Force Account" workers).</p>	Y N	<p>Include in all contracts in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers, a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. Work performed by employees of the Recipient (in-house forces) on the EDA-assisted project will be subject to the following:</p> <ol style="list-style-type: none"> <li>1. Work performed in excess of eight hours per day will be reimbursed by EDA at the normal rate of pay unless the Recipient can show that a higher rate is required by State or local law or union contract;</li> </ol>		<ol style="list-style-type: none"> <li>2. Work performed in excess of 40 hours per week may be reimbursed by EDA at a higher rate than normal if the Recipient can show that it normally pays for such work at a higher rate. In any case the rate for work in excess of 40 hours per week may not exceed one and one half times the normal hourly rate.</li> </ol>
Y N					<p>Include a notice in all contracts involving research, developmental, experimental or demonstration work requiring that all patentable processes, discoveries or inventions which arise or are developed in the course of, or under, such contract shall be reported to EDA. The notice will state that the Government has an interest in any such patentable processes, discoveries or inventions corresponding to the percentage of total project cost funded by EDA.</p>
Y N					<p>Include in all negotiated contracts (except those awarded by small purchase procedures) a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.</p>
Y N					<p>Include in all contracts a requirement that the contractor maintain all relevant project records for three years after the Recipient has made final payment to the contractor and all other pending matters are closed.</p>
Y N					<p>State a specific timetable in the architect/engineer agreement for:</p> <ol style="list-style-type: none"> <li>1. Completing preliminary plans and associated cost estimates;</li> <li>2. Completing final plans, specifications, and cost estimates;</li> </ol>

		3. Securing required State and local approvals; and	Y	N	Prepare and submit proposed contract change orders when applicable. There shall be no charge to the Recipient when the change order is required to correct errors or omissions by the Architect/Engineer. (To be eligible for EDA participation the specific change order must have written approval from EDA and must have some form of cost or price analysis performed by the Recipient or the Architect/Engineer).	1. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin;
		4. Completing proposed contract documents in a form sufficient for soliciting bids for construction of the project. (If the Recipient has executed an Architect/Engineer agreement without such a requirement for a timetable, EDA shall require that an addendum to the agreement be executed to incorporate this requirement).				2. Section 112 of PL 92-45 and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686) which prohibits discrimination on the basis of sex;
Y	N	Provide surveillance of project construction to assure compliance with plans, specifications, and all other contract documents. If the Recipient chooses to use the Architect/Engineer as the project inspector, the requirements for construction inspection services shall be clearly defined and the amount the Recipient is required to pay for such services shall be stated.	Y	N	Submit a report not less frequently than quarterly to the Recipient covering the general progress of the job and describing any problems or factors contributing to delay.	3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) which prohibits discrimination on the basis of handicaps;
			Y	N	Review and approve the contractor's schedule of amounts for contract payment.	4. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination because of age;
			Y	N	Certify partial payments to contractors.	5. The Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse;
Y	N	Be responsible for any damages arising from any defects in design or negligence in the performance of the construction inspector, if the inspector is furnished by the Architect/Engineer. (EDA recommends that the Architect/Engineer be required to take insurance, when available, to cover liability for such damages).	Y	N	Assure that a ten percent (10%) retainage is withheld from all payments on construction contracts until final acceptance by the Recipient and approval by the EDA Regional Office, unless State or local law provides otherwise.	6. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to non-discrimination on the basis of alcohol abuse or alcoholism;
			Y	N	Prepare "as-built" or record drawings after completion of the project. Reproducible originals will be furnished to the Recipient within 60 days after all construction has been completed and the final inspection has been performed. (One set of copies shall be furnished to the EDA Regional Office only if requested by the Regional Office).	7. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
Y	N	Supervise any required subsurface explorations such as borings, soil tests, and the like, to determine amounts of rock excavation or foundation conditions, no matter whether they are performed by the Architect/Engineer or by others paid by the Recipient.	Y	N	Review and approve the contractor's submission of samples and shop drawings, where applicable.	8. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et. seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing;
			Y	N	Comply with all Federal statutes relating to non-discrimination. These include but are not limited to:	9. Any other non-discrimination provisions in the specific statute(s) under which the application for Federal assistance is being made; and
Y	N	Attend bid openings, prepare and submit tabulation of bids, and make a recommendation as to contract award.				10. The requirements of any other non-discrimination statute(s) which may apply.
		Review proof of bidder's qualifications and recommend approval or disapproval.				

		Incorporate into the proposed construction contract documents a designation of all of the different types of construction which will be used for the project; such as Building, Heavy or Highway in accordance with all local and State laws and practices. For this purpose either the plans, the specifications or both shall clearly delineate where each type stops and another starts.			Use forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond which meet EDA requirements. All proposed contract documents are subject to EDA approval. (Documents contained in "Contract Documents for Construction of Federally Assisted Water and Sewer Projects" are acceptable for this purpose).			Details of how the successful bidder will be selected
Y	N	Consider in the establishment of the compensation any cost savings that may be realized through multiple use of the same design.			The name and address of the Architect/Engineer is:			Actions to be taken by the Recipient if the lowest bid exceeds the funds available
Y	N	Provide in all proposed construction contracts deductive alternates which can be taken, if necessary, to reduce the bid price so that the lowest responsive bid for construction of the project will not exceed the funds available.			The Architect/Engineer will perform project inspection services. If not, provide the name and address of the firm or person that will provide project construction inspection services:			Requirement for 5% bid bond, 100% payment bond and 100% performance bond
Y	N	Design the facility to comply with the Americans with Disabilities Act (ADA) (P.L. 101-336) and the Accessibility Guidelines for Buildings and Facilities, as amended, (36 CFR Part 191 and Executive Order 12699.			The contract price for Basic Services is \$ ____ The contract price for Extra Services is \$ ____ The contract price for inspection services is \$ ____ The number of proposals received were ____ The number of bidders disqualified were ____			The order in which alternates, if any, are to be taken
Y	N	Design for seismic safety in accordance with Executive Order 12699 which imposes requirements that federally assisted facilities be designed and constructed in accordance with the 1991 ICBO Uniform Building Code or 1992 Supplement to the BOCA National Building Code and/or 1991 Amendments to the SBCC Standard Building Code.			Recipients Authorized Representative  Date			Provisions for termination of the contract including default of the contractor and conditions beyond the control of the contractor
Y	N	Provide sufficient plans, specifications, bid sheets, cost estimates, design analysis, and other contract documents required for the project. The number of copies to be furnished by the Architect/Engineer as part of his/her compensation for basic services shall be specified in the agreement.			<b>Checklist for Construction Contracts</b>  Although the use of this checklist is not mandatory, its use by the Recipient will expedite EDA's review of the construction contract. When used by the Recipient, it should be submitted to EDA at or before the invitation for construction contract bids is published. EDA reserves the right to perform a pre-award review of the proposed procurement documents or a review of the executed contract documents at any time within the record retention time frame. The appropriate responses should be circled in ink and the authorized representative of the Recipient should sign the form where indicated.  The following documents are included in the invitation for bids: Y N An index Y N The advertisement for bids Y N The information for bidders Y N The bid form Y N The contract form Y N EDA's Supplemental General Conditions (to be furnished by EDA) Y N The recipient's general conditions Y N The technical specifications Y N The working drawings Y N The applicable wage rates (to be furnished by EDA) Y N Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (to be furnished by EDA)			Provisions for administrative, contractual or legal remedies for contractor breach or violation of contract terms and provision for such sanctions and penalties as may be appropriate
								A requirement that the contractor maintain all relevant project records for three years after the Recipient has made final payment to the contractor
								A requirement that the bidders submit proof of qualification to do the work called for in the contract
								Notice that progress payments will have a 10% retainage ( unless otherwise required by State or local law)
								A requirement for the contractor to submit all shop drawings, samples and change orders to the Architect/Engineer and Recipient for approval
								A requirement for a construction progress estimate and periodic progress reports from the construction contractor
								A procedure for the settlement of disputes between the contractor, the contractor's subcontractors, the Architect/Engineer and the Recipient
								A liquidated damages provision for failure of the contractor to meet the specified construction timetable. The amount specified in the proposed contract is \$____ per day
								The proposed design contains no materials or products specified by brand name without an "or equal" provision
								A requirement is included for compliance with Federal regulations as listed in EDA's Supplemental General Conditions, EDA's Standard Terms and Conditions to the grant award and the Special Conditions to the grant award
								The bidders will be limited to those on a prequalified list maintained by the Recipient. If so, explain on an attached sheet the procedure that is used to place prospective bidders on the list.
								Recipient furnished materials and/or equipment will be incorporated into the projects outside the construction contract. If so, attach a list of such materials and/or equipment.

Y	N	No part of the project construction will be accomplished by the Recipient's own forces or by labor hired directly by the Recipient for this specific project. If so, contact the EDA regional office for further guidance.	Y	N	NA	The proposed bid documents were approved by EDA.	Y	N	NA	Tabulation of bids, bid form of the low bidder (and bid form of any bidder to whom the Recipient has made, or proposes to make to other than the lowest bidder) and certified minutes of the bid opening have been submitted to EDA.
Y	N	The contract is solely for the EDA project. If non-EDA work is included, contact the EDA regional office for further guidance.	Y	N	NA	The final plans, specifications and contract documents have been approved by EDA.				
Y	N	The land, rights of way and easements required for the construction and operation of the project are owned by the Recipient or otherwise have been appropriately permitted by the responsible authorities.	Y	N	NA	All contracts required for completion of the project have been executed and approved by EDA.				
Y	N	The Recipient's share of the project cost is on hand or immediately available.	Y	N	NA	If the answer to the previous question is "N", a request for phasing has been made to, and approved by, EDA.				
Y	N	Provisions for construction inspection are in place.	Y	N	NA	Bid award of the construction contract was to the lowest bidder.				
Y	N	All applicable terms and conditions of the grant award have been satisfied. If not, please explain on an attached sheet.	Y	N	NA	The full firm name and owner's name of all contractors have been furnished to EDA for checking against the Federal debarred and ineligible list.				
Y	N	The scope of work for the project as described in the grant award has not changed.	Y	N	NA	The company listed as surety for the low bidder is listed on Treasury Department Circular 570 and possesses sufficient capability to insure the project.				
		The construction period specified in the proposed contract is for _____ months.	Y	N	NA	Davis-Bacon wage rates have been incorporated into all construction contracts.				
		The Architect/Engineer's cost estimate for construction is \$_____.	Y	N	NA	EDA's Supplemental General Conditions have been incorporated into all construction contracts.				
		The advertising period will be from _____ to _____.	Y	N	NA	Matching funds for the Recipient's share are on hand or immediately available.				
		_____ Recipient's Authorized Representative	Y	N	NA	A first lien or Property Management Agreement has been executed, recorded and submitted to EDA.				
		_____ Date	Y	N	NA	A relocation assistance plan as required by the Uniform Relocation Assistance Act has been approved by EDA.				
		<b>Checklist for Initial Grant Disbursement</b>	Y	N	NA	Use of force account (workmen hired by the Recipient specifically for the EDA approved project) has been approved by EDA.				
		Grant Recipient: _____	Y	N	NA	Use of in-house forces (workmen who are part of the Recipient's current workforce) has been approved by EDA.				
		EDA Project # _____	Y	N	NA	EDA approval of the start of construction before the award of the EDA grant has been received.				
		Grant Recipient's Authorized Representative: _____	Y	N	NA	All work accomplished by change order which is part of the claim for the initial grant disbursement has been approved by EDA.				
		Name: _____	Y	N	NA	All proposed or actual changes to the EDA approved budget have been approved by EDA.				
		Title: _____	Y	N	NA	All project activities to the date of the initial grant disbursement request have been accomplished within the approved time schedule or EDA approved extension.				
		This checklist is for guidance on the information the EDA regional office will need before an initial grant disbursement can be approved. The regional office may use their own version of this checklist which may or may not be required to be sent in with the initial grant disbursement request. Use of the checklist will expedite EDA processing of the initial grant award/offer was accepted within the 15 day after receipt time limit.	Y	N	NA	Currently due project performance reports have been submitted to EDA.				
Y	N	NA	Those Special Conditions to the grant award requiring action prior to the initial grant disbursement have been satisfied.							
Y	N	NA	An architect/engineer contract has been approved by EDA.							
Y	N	NA	An unconditional "EPA Section 106" certificate has been secured and a copy furnished to, or received from, EDA.							
Y	N	NA	All required land, easements and rights-of-way have been secured and title opinion has been approved by EDA.							

**Checklist for Project Closeout**

Grant Recipient: \_\_\_\_\_

EDA Project # \_\_\_\_\_

Grant Recipient's Authorized Representative:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

This checklist is for the Recipient's guidance on the information the EDA regional office will need to close out the EDA assisted project. Although its use is not mandatory, using it will expedite EDA's processing of the final grant award/offer was satisfied and approved by the EDA regional office.

Y N NA A final inspection was performed by the Architect/Engineer and the completion of the project with all deficiencies corrected has been accepted by the Architect/Engineer in writing.

Y N NA The Recipient has accepted the project without deficiencies from the contractor.

Y N NA All currently due project progress reports have been submitted to the EDA regional office.

Y N NA The project was completed on time or an EDA approved time extension is on file.

Y N NA As-built drawings have been received from the Architect/Engineer and are on file.

Y N NA If requested by EDA, photographs of above ground facilities have been submitted to EDA.

Y N NA The Recipient understands that a warranty inspection is to be performed before the warranty expiration date and the results submitted to EDA.

Y N NA All audit issues have been resolved.

Y N NA If occupancy of the facilities by the Recipient was obtained prior to the Recipient's or Architect/Engineer's acceptance of the facility from the contractor evidence of consent of the contractor, the insurance carrier, and the surety is on file.

Y N NA Permanent insurance on the facility has been obtained.

Y N NA The Recipient is aware that project records must be retained for a minimum of three years.

- Y N NA The Recipient is aware that for the EDA determined useful life of the EDA assisted facilities, all real property must be used for originally authorized purposes and the Recipient shall not dispose of or encumber its title or other interests. When the facility is no longer needed for the originally authorized purpose and the useful life has not expired, the Recipient will request instructions from EDA. The instructions will conform to applicable DoC and EDA regulations.
- Y N NA All payments due to contractors for construction, services and supplies for the project are current except for contract retainage if project has not been accepted.
- Y N NA The first Post Construction Report evaluating the achievement of the Core Performance Measures listed in the Standard Terms and Conditions to the EDA grant has been submitted to EDA.

#### Exhibit B—Supplemental General Conditions

These Supplemental General Conditions are intended for use by Economic Development Administration Grantees. They contain specific EDA and other Federal requirements not normally found in non-Federal contract documents. The requirements contained herein must be incorporated into all construction contracts and subcontracts funded wholly or in part with EDA funds.

#### Supplemental General Conditions

- S1 Definitions
- S2 Federally Required Contract Provisions
- S3 Required Provisions Deemed Inserted
- S4 Inspection by EDA Representatives
- S5 Construction Schedule and Periodic Estimates
- S6 Contractor's Title to Material
- S7 Inspection and Testing of Materials
- S8 "Or Equal" Clause
- S9 Patents
- S10 Claims for Extra Cost
- S11 Contractor's and Subcontractor's Insurance
- S12 Contract Security
- S13 Safety and Health Regulations for Construction
- S14 Minimum Wages
- S15 Withholding of Payments
- S16 Payrolls and Basic Records
- S17 Apprentices and Trainees
- S18 Subcontracts
- S19 Termination and Debarment
- S20 Overtime Requirements
- S21 Equal Employment Opportunity
- S22 Other Prohibited Interests
- S23 Employment of Local Labor
- S24 Historical and Archeological Data Preservation Act of 1974
- S25 Clean Air and Federal Water Pollution Control Act
- S26 Use of Lead-Based Paints on Residential Structures
- S27 Signs
- Supplemental General Conditions**
- S-1 Definitions**
- The following terms as used in these Supplemental General Conditions are respectively defined as follows:
- a. "Contractor": A person, firm, or corporation with whom this Contract is made by the Owner.
- b. "Subcontractor": A person, firm, or corporation supplying labor and materials or only labor, for work at the site of the project, for and under separate contract or agreement with the Contractor.
- c. "Work on (at) the project": Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any subcontractor.
- d. "Apprentice": (1) A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau; or (2) a person in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship council (where appropriate) to be eligible for probationary employment as an apprentice.
- e. "Trainee": A person receiving on-the-job training in a construction occupation under a program which is approved (but not necessarily sponsored) by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and which is reviewed from time to time by the Manpower Administration to insure that the training meets adequate standards.
- S-2 Federally Required Contract Provisions**
- a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts more than the simplified acquisition threshold—currently fixed at \$100,000, see 41 USC 403(11)).
- b. Termination for cause and for convenience by the grantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of \$10,000).
- c. Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).
- d. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).
- e. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by

Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees).

f. Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

g. EDA requirements and regulations pertaining to reporting.

h. EDA requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

i. EDA requirements and regulations pertaining to copyrights and rights in data.

j. Access by the grantee, EDA, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

k. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

l. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, subcontracts, and subgrants of amounts in excess of \$ 100,000).

m. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub L. 94-163, 89 Stat. 871).

#### S-3 Required Provisions Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion of correction.

#### S-4 Inspection by Economic Development Representatives

The authorized representatives and agents of the Economic Development Administration shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records.

#### S-5 Construction Schedule and Periodic Estimates

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver

to the Owner an estimated construction progress schedule in form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor also shall furnish the Owner (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

#### *S-6 Contractor's Title to Material*

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he/she has good title to all materials and supplies used by him/her in the work, free from all liens, claims or encumbrances.

#### *S-7 Inspection and Testing of Materials*

All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner.

Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended users.

#### *S-8 "Or Equal" Clause*

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article or equipment of other manufacturers and vendors which will perform adequately the duties, imposed by the general design will be considered equally acceptable provided the material, article or equipment so proposed is, in the opinion of the Architect/Engineer, of equal substance and function. It shall not be purchased or installed by the Contractor without the Architect/Engineer's written approval.

#### *S-9 Patents*

The Contractor shall hold and save the owner and its officers, agents, servants and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the contract documents.

License or Royalty Fee: License and/or royalty fees for the use of a process which is

authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized licensee, directly by the Owner and not by or through the Contractor. If the Contractor uses any design, device or materials covered by letters, patent or copyright, he/she shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his/her Sureties shall indemnify and hold harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

#### *S-10 Claims for Extra Costs*

No claims for extra work or cost shall be allowed unless the same was done in pursuance of a written order from the Architect/Engineer approved by the Owner.

#### *S-11 Contractor's and Subcontractor's Insurance*

The Contractor shall not commence work under this contract until he/she has obtained all the insurance required by the Owner, nor shall the Contractor allow any subcontractor to commence work on his/her subcontract until the insurance required of the subcontractor has been so obtained and approved.

a. Types of insurance normally required are:

1. Workmen's Compensation.
2. Contractor's Public Liability and Property Damage.
3. Contractor's Vehicle Liability.
4. Subcontractors Public Liability, Property Damage and Vehicle Liability.
5. Builder's Risk (Fire and Extended Coverage).

b. Scope of Insurance and Special Hazards. The insurance described above shall provide adequate protection for the Contractor and his/her claims which may arise from operations under this contract, whether such operations be by the insured or by any one directly or indirectly employed by him/her and also against any of the special hazards which may be encountered in the performance of this contract.

c. Proof of Carriage of Insurance The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies.

#### *S-12 Contract Security Bonds*

If this contract is for an amount in excess of \$100,000 the Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract price as security for the faithful performance of this contract and also a

payment bond in an amount equal to one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by State, Territorial or local law, as security for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law. Before final acceptance each bond must be approved by the Economic Development Administration. If this contract is for an amount less than \$100,000 the Owner will specify the amount of the payment and performance bonds.

#### *S-13 Safety and Health Regulations for Construction*

In order to protect the lives and health of his/her employees under the contract, the Contractor shall comply with all pertinent provisions of the Contract Work Hours and Safety Standards Act, as amended, commonly known as the Construction Safety Act as pertains to health and safety standards; and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the contract. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor.

The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his/her plan, equipment, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance, or operation.

#### *S-14 Minimum Wages*

All mechanics and laborers employed or working on the site of the work, or under the United States Housing Act of 1937, or under the Housing Act of 1949 in the construction or development of the project will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and subcontractor and such laborers and mechanics; and the wage determination decision shall be posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to

such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv).

Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

The Owner shall require that any class of laborers and mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformable to the wage determination and a report of the action taken shall be sent by the Federal agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the questions accompanied by the recommendation of the contracting officer shall be referred to the Secretary of Labor for final determination.

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Contractor is obligated to pay a cash equivalent of such a fringe benefit, the Owner shall require an hourly cash equivalent to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the Owner, shall be referred to the Secretary of Labor for determination.

If the Contractor does not make payments to a trustee or other third person, he/she may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract; provided, however, the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### *S-15 Withholding of Payments*

The Economic Development Administration may withhold or cause to be withheld from the Contractor as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the Contractor or any subcontractor on the work, the full amount of wages required by the contract in accordance with the Davis-Bacon Act. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee employed or working on the project site or under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project, all or part of the wages required by the contract, the Economic Development Administration may, after written notice to

the Contractor, sponsor, applicant, or Owner, take action as may be necessary to cause the suspension of any further payment, advance, or guaranty of funds until such violations have ceased.

#### *S-16 Payrolls and Basic Records*

Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the EDA project site, or under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project. Such records shall contain the name and address of each employee, his/her correct classification, rate of pay (including contributions or costs anticipated of the types described in Section 9(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan program described in Section 1(b)(2)(B) of the Davis-Bacon Act the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, plus records which show the costs anticipated or the actual cost incurred in providing such benefits.

The Contractor shall submit weekly a copy of all payrolls to the Owner on DOL Form WH-347 or equivalent. The copy shall be signed on the reverse side by the employer or his/her agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he/she performed. This submission is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 20 CFR 5.5(a)(1)(iv) shall satisfy this requirement. The Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The Contractor shall make the records required under the labor standards clause of the contract available for inspection by authorized representatives of the Economic Development Administration and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

#### *S-17 Apprentices and Trainees*

Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau

of Apprenticeship and Training, U.S. Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his/her entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in Section S-1e herein and is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor shall be required to furnish to the Owner written evidence of the registration of his/her program and apprentices as well as of the appropriate ratios and wage rates for the area of construction prior to using any apprentices on the contract work.

Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and when the subparagraph below is applicable, in accordance with the provisions of Part 5, Subpart A, Title 29, Code of Federal Regulations.

On contracts in excess of \$10,000, the employment of all laborers and mechanics, including apprentices and trainees, as defined in Section 29 CFR 5.5 shall also be subject to the provisions of Part 5, Subpart A, Title 29, Code of Federal Regulations. Apprentices and trainees shall be hired in accordance with the requirements of Part 5, Subpart A. The provisions of Sections S-14, S-15, and S-17 shall be applicable to every invitation for bids, and to every negotiation, request for proposals, or request for quotations, for an assisted construction contract, and to every such contract entered into on the basis of such invitation or negotiation. Part 5, Subpart A, Title 29, Code of Federal Regulations shall constitute the conditions of each assisted contract in excess of \$10,000, and each Owner concerned shall include these conditions or provide for their inclusion, in each such contract. These "Supplemental General Conditions" shall also be included in each such contract.

#### *S-18 Subcontracts*

The Contractor shall insert in any subcontracts these same "Supplemental General Conditions."

#### *S-19 Termination and Debarment*

A breach of any one of the Sections S-15 through S-18 may be considered by the Owner and by the Economic Development Administration as grounds for termination of the contract and for debarment as provided in 29 CFR 5.6.

#### *S-20 Overtime Requirements*

No Contractor nor any subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he/she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic

rate of pay for all hours in excess of forty hours in such workweek.

In the event of any violation of the clause set forth in the subsection above, the Contractor and any subcontractor responsible therefor, shall be liable to any affected employee for his/her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or territory, to such District of Columbia or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth above in the sum of \$10.00 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth above.

The Economic Development Administration may withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth above.

The Contractor shall insert in all subcontracts the clause set forth above in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts that may, in turn, be made.

#### *S-21 Equal Employment Opportunity*

No person in the United States shall, on the grounds of race, color, national origin, age, physical handicap, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance; Reference Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and Section 112 of Public Law 92-65, Age Discrimination Act of 1975 (42 USC 6102) and Section 504 of the Rehabilitation Act of 1973 (26 USC 794).

Form ED-503. The Owner and all Contractors, subcontractors, suppliers, leases and other parties directly participating in the Recipient's project agree that during and in connection with the associated agreement relating to the Federally assisted program, (i) they will comply, to the extent applicable, as Contractors, subcontractors, lessees, suppliers, or in any other capacity, with the applicable provisions of 13 CFR 311 and the Regulations of the United States Department of Commerce (Part 8 of Subtitle A of Title 15 of the Code of Federal Regulations) issued pursuant to Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and will not thereby discriminate against any person on the grounds of race, sex, color, age, or national origin in their employment practices, in any of their own contractual agreements, in all services or accommodations which they offer to the public, and in any of their other business operations, (ii) they will provide information required by or pursuant to said

Regulations to ascertain compliance with the Regulations and these assurances, and (iii) their non-compliance with the nondiscrimination requirements of said Regulations and these assurances shall constitute a breach of their contractual arrangements with the Owner whereby said agreements may be canceled, terminated or suspended in whole or in part or may be subject to enforcement otherwise by appropriate legal proceedings.

Executive Order 11246, 3 CFR 339 (1965) (Equal Opportunity Clause). During the performance of this contract, the Contractor agrees as follows:

a. The Contractor shall not discriminate against any employee or applicant for employment because of age, race, color, religion, sex, handicap, or national origin. The Contractor shall take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, handicap or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

b. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Grantee setting forth the provisions of this nondiscrimination clause.

c. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.

d. A notice to be provided by the Grantee shall be sent to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract of understanding, advertising the labor union or workers' representative of the Contractor's commitment under Section 202 of Executive Order No. 11246 of September 24, 1965, and copies of the notice shall be posted in conspicuous places available to employees and applicants for employment.

e. The Contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of rules, regulations, and relevant orders of the Secretary of Labor.

f. The Contractor shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the Economic Development Administration and the Secretary of Labor for purpose of investigation to ascertain compliance with such rules, regulations, and orders. Each Contractor and subcontractor of federally assisted construction work is required to file an Equal Employment Opportunity Employer Information Report (EEO-1) on Standard Form 100, annually on March 31. Forms and instructions are available at the EDA Regional Offices.

g. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed (and remedies involved) as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. The Contractor shall include the provisions of paragraphs a. through g. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 203 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Economic Development Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Grantee/Borrower, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

i. Exemptions to Above Equal Opportunity Clause (41 CFR Chap. 60):

(1) Contracts and subcontracts not exceeding \$10,000 (other than Government bills of lading) are exempt. The amount of the contract, rather than the amount of the Federal financial assistance, shall govern in determining the applicability of this exemption.

(2) Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.

(3) Contracts and subcontracts not exceeding \$10,000 for standard commercial supplies or raw materials are exempt.

#### **Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246 et seq)**

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South



American or other Spanish Culture or origin, regardless of race);

2. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

a. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

3. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

4. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to make good faith efforts to achieve the Plan goals and timetables.

5. The Contractor shall implement the specific affirmative action standards provided in Paragraphs 7a through p of these specifications. The goals set for the Contractor in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

6. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

7. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and

trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

8. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority and female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Regional Director when the union or unions, with which the Contractor has a collective bargaining agreement, have not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under Paragraph 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective

bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, Supervisors, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, and providing written notification to, and discussing the Contractor's EEO policy with, other Contractors and subcontractors with whom the Contractor anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after-school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 14 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from

minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Paragraph 7a through p). The efforts of a contractor association, joint contractor-union, contractor community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraph 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall

implement specific affirmative action steps, at least as extensive as those standards prescribed in Paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof, as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. The goals for minority and female participation in each trade will be furnished by the Economic Development Administration of the U.S. Department of Commerce.

#### *S-22 Other Prohibited Interests*

No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

#### *S-23 Employment of Local Labor*

a. The maximum feasible employment of local labor shall be made in the construction of public works and development facility

projects receiving direct Federal grants. Accordingly, every Contractor and subcontractor undertaking to do work on any such project which is or reasonably may be done as on-site work, shall employ, in carrying out such contract work, qualified persons who regularly reside in the designated area where such project is to be located, or in the case of Economic Development Centers, qualified persons who regularly reside in the center or in the adjacent or nearby redevelopment areas within the Economic Development District, except:

(1) To the extent that qualified persons regularly residing in the designated area or Economic Development District are not available.

(2) For the reasonable needs of any such Contractor or subcontractor, to employ supervisory or specially experienced individuals necessary to assure an efficient execution of the Contract.

(3) For the obligation of any such Contractor or subcontractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that in no event shall the number of non-resident persons employed under this subparagraph exceed twenty percent of the total number of employees employed by such Contractor and his/her subcontractors on such project.

b. Every such Contractor and subcontractor shall furnish the United States Employment Service Office in the area in which a public works or development facility project is located with a list of all positions for which it may from time to time require laborers, mechanics, and other employees, the estimated numbers of employees required in each classification, and the estimated dates on which such employees will be required.

c. The Contractor shall give full consideration to all qualified job applicants referred by the local employment service, but it is not required to employ any job applicants referred whom the Contractor does not consider qualified to perform the classification of work required.

d. The payrolls maintained by the Contractor shall contain the following information: full name, address, and social security number and a notation indicating whether the employee does, or does not, normally reside in the area in which the project is located, or in the case of an Economic Development Center, in such center or in an adjacent or nearby redevelopment area within the Economic Development District, as well as an indication of the ethnic background of each worker.

e. The Contractor shall include the provisions of this condition in every subcontract for work which is, or reasonably may be, done as on-site work.

#### *S-24 Historical and Archaeological Data Preservation Act Requirements*

The Contractor agrees to facilitate the preservation and enhancement of structures and objects of historical, architectural or archaeological significance and when such items are found and/or unearthed during the course of project construction, to consult

with the State Historic Preservation Officer for recovery of the items. Reference: National Historic Preservation Act of 1966 (80 Stat 915, 16 USC 470) and Executive Order No. 11593 of May 31, 1971.

*S-25 Clean Air Act of 1970, Et Seq. and Federal Water Pollution Control Act as Amended by the Clean Water Act of 1977*

The Contractor agrees to comply with Federal clean air and water standards during the performance of this contract and specifically agrees to the following:

a. The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations; owned, leased, or supervised; by the Contractor and the subcontractors; for the construction, supply and service contracts entered into by the Contractor;

b. Any facility to be utilized in the accomplishment of this contract is not listed on the Environmental Protection Agency's List of Violating Facilities pursuant to 40 CFR, Part 15.20;

c. In the event a facility utilized in the accomplishment of this contract becomes listed on the EPA list, this contract may be canceled, terminated, or suspended in whole or in part;

d. It will comply with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308, respectively, and all regulations and guidelines issued thereunder;

e. It will promptly notify the Government of the receipt of any notice from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility utilized or to be utilized in the accomplishment of this contract is under consideration for listing on the EPA List of Violating Facilities;

f. It will include the provisions of Paragraphs a. through g. in every subcontract or purchase order entered into for the purpose of accomplishing this contract, unless otherwise exempted pursuant to the EPA regulations implementing the Air or Water Acts above (40 CFR, Part 15.5), so that such provisions will be binding on each subcontractor or vendor;

g. In the event that the Contractor or the subcontractor for the construction, supply and service contracts entered into for the purpose of accomplishing this contract were exempted from complying with the above

requirements under the provisions of 40 CFR, Part 15.5 (a), the exemption shall be nullified should the facility give rise to a criminal conviction (see 40 CFR 15.20) during the accomplishment of this contract.

Furthermore, with the nullification of the exemption, the above requirements shall be effective. The Contractor shall notify the Government, as soon as the Contractors' or the subcontractors' facility is listed for having given rise to a criminal conviction noted in 40 CFR, Part 15.20.

*S-26 Use of Lead-Based Paints on Residential Structures*

If the work under this contract involves construction or rehabilitation of residential structures, the Contractor shall comply with the Lead-based Paint Poisoning Prevention Act (see 42 U.S.C. 4831). The Contractor shall assure that paint used on the project on applicable surfaces does not contain lead in excess of the percentages set forth in Paragraphs (a) and (b) of this section. In determining compliance with these standards, the lead content of the paint shall be measured on the basis of the total nonvolatile content of the paint or on the basis of an equivalent measure of lead in the dried film of paint already applied.

a. For paint manufactured after June 22, 1977, paint may not contain lead in excess of 6 one-hundredths of 1 percent (.00006) lead by weight.

b. For paint manufactured on or before June 22, 1977, paint may not contain lead in excess of five-tenths of 1 percent lead by weight.

As a condition to receiving assistance under the Act, recipients shall assure that the restriction against the use of lead-based paint is included in all contracts and subcontracts involving the use of Federal funds.

**Definitions**

1. "Applicable surfaces" are those exterior surfaces which are readily accessible to children under 7 years of age.

2. "Residential structures" means houses, apartments, or other structures intended for human habitation, including institutional structures where persons reside, which are accessible to children under 7 years of age, such as day care centers, intermediate and extended care facilities, and certain community facilities.

*S-27 EDA Signs*

The Contractor shall supply, erect, and maintain a project sign according to the specifications set forth below:

**EDA Site Sign Specifications**

Size: Sign A: 4' x 8' x 1 7/8" Sign B: 4' x 8' x 3/4"

Materials: Face: Sign A: 1/4" tempered Masonite; Sign B: 3/4" or greater shop sanded (exterior) Plywood (one side only)

Framing: Sign A: 2" x 4" nominal on four sides and center cross bracing; Sign B: 2" x 4" center cross bracing only

Supports: 4" x 4" x 12' nominal post

Assembly: Sign A: 2" x 4" frame to fit 4' x 8' board with 2" x 4" cross braces; Sign B: To be mounted directly to the 4" x 4" post, with cross bracing

Mounting: Signs A and B are to be mounted to the 4" x 4" post with a 3/8" minimum bolt and nut, four on each side of the sign. Each bolt is to have two washers, one between the sign and the head of the bolt and the other between the post and the nut.

Erection: 4" x 4" posts are to be set three to four feet deep into concrete 12" in diameter.

Paint: Face: Three coats outdoor enamel (sprayed); Rear: One coat outdoor enamel (sprayed)

Colors: Crimson Red, Stark White and Royal Blue. Specifically, white background; "JOBS" in red; "for your community" in blue; "EDA" logo and "PROVIDED BY EQUAL OPPORTUNITY EMPLOYERS, in partnership with the U.S. DEPARTMENT OF COMMERCE—Economic Development Administration" in black. "By working together we can provide economic opportunities for Americans" in black.

Lettering: Silk screen enamels. Lettering sizes and positioning will be as illustrated.

Project signs will not be erected on public highway rights-of-way.

Location and height of signs will be coordinated with the agency responsible for highway or street safety in the area, if any possibility exists for obstruction to traffic line of sight.

If, at the end of the project, the sign is reusable, it shall be disposed of as directed by the EDA Regional Office.

Whenever EDA Site Sign specifications conflict with State law or local ordinances, the EDA Regional Director may modify such conflicting specifications so as to comply with that State law or local ordinance.

**BILLING CODE 3510-24-P**

## SAMPLE

U.S. DEPARTMENT OF COMMERCE  
ECONOMIC DEVELOPMENT ADMINISTRATION

## CERTIFICATE AS TO PROJECT SITE, RIGHTS-OF-WAY, AND EASEMENTS

Part One  
Certificate of Engineer

I, the undersigned Engineer, certify that I am familiar with the design of the

\_\_\_\_\_  
(Name/Type of Facility)

being constructed by the \_\_\_\_\_

(Name of Owner)

as part of EDA Project Number \_\_\_\_\_ and that all of such facilities will be constructed wholly within the land, leasehold interest and rights-of-way hereinafter described and existing public streets and roads. I further certify that the land, leasehold interest and rights-of-way being purchased as hereinafter described are sufficient but not in excess of actual needs for the Project as planned and approved by the Owner.

1. Fee Title or a long term leasehold interest is required for the following property (Project elements constructed above ground should be on land owned in Fee. Describe each tract, whether presently owned or to be acquired, and indicate what Project element is to be constructed thereon, i.e., tank site, pumping station, treatment plant, etc.; if more space is needed use additional sheets marked 'Exhibit A'):

2. The following easements and rights-of-way will be required for this Project (Describe each easement and rightof-way, whether presently owned or to be acquired, Describe by courses and distances and by name of Owner, including area in acres; if more space is needed use additional sheets marked "Exhibit B"):

3. The following state, railroad, highway or other permits will be required (Describe location and name of permitter; if more space is needed use additional sheets marked 'Exhibit C'):

WITNESS MY HAND, this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
Registered Professional Engineer

Telephone No. \_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State

(TO BE COMPLETED BY ARCHITECT/ENGINEER AND FORWARDED TO OWNER'S ATTORNEY)

**Part Two**  
**Title Opinion**

I, \_\_\_\_\_ Attorney-at-Law,

representing \_\_\_\_\_

(hereinafter the 'Owner') do hereby certify that:

1. I have examined the public record of \_\_\_\_\_ County, \_\_\_\_\_ State  
from the period of \_\_\_\_\_, 19\_\_ to \_\_\_\_\_ 19\_\_ (which period of time should be at least 40 years). Based upon said examination, I find and am of the opinion that \_\_\_\_\_ is vested with marketable, fee simple title to the land referenced in Part One hereof as being required in fee, subject only to the following liens, encumbrances and objections (if none write 'None'):

Any encumbrances or objections to the fee simple title listed above will not, in my opinion, restrict or interfere with the contemplated construction, use or purpose of the aforesaid EDA Project.

2. This is to further certify that all easements or rights-of-way described in Part One as being needed for the noted Project have been acquired by the Owner, that all long term leases described in Part One as being needed for the noted Project have been entered into by the Owner, that I have examined the instruments creating the easements, rights-of-way, or long term leases described in Part One, and it is my opinion that said instruments are valid as to form and substance for the purposes intended and provide the Owner with sufficient interest to construct and maintain the Project facilities.

I certify that I have examined the public records for the purpose of ascertaining that said easements and/or rights-of-way have been obtained from the record owner(s).

3. The extent of said title examination, is sufficient for the purpose of establishing the validity of the title to said property and for the purpose of determining outstanding restrictions, liens, encumbrances, and ownership interests pertaining thereto.
4. All permits described in Part One as being needed for this Project have been obtained and I have examined all of said permits and am of the further opinion that said permits are valid as to form and substance for the purposes intended.
5. Remarks and Explanations:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney-at-Law

Telephone No. \_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

- ◆ It is the sole responsibility of the Recipient/Grantee of the EDA grant award to provide a legal opinion verifying that the Recipient/Grantee has good title to all property required for completion of the Project as defined by the grant award.
- ◆ A long term leasehold interest is acceptable only if held by the Recipient/Grantee of the EDA grant award for a period not less than the estimated useful life of the Project and only if lease provisions adequately safeguard EDA's interest in the Project.
- ◆ Only legal descriptions of the property described herein should be attached to this form.
- ◆ If this title opinion is based on a title insurance policy, any exceptions listed on the policy should be explained and resolved in #5 above.
- ◆ EDA relies on this title opinion and does not make independent findings regarding title to the property described herein.

## Notice

This attached Exhibit D, "Agreement and Mortgage" is furnished as a sample. The actual form which the Recipient may be required to sign may differ from the sample dependent upon the type of property, the form of ownership, and the intent of the EDA assisted project (Check with the Regional Attorney in the EDA regional office). Attention is called to the "useful life", stated in terms of years, during which period the "Agreement and Mortgage" will remain in effect.

**Agreement and Mortgage**

WHEREAS, \_\_\_\_\_ (hereinafter called "Mortgagor"), whose address is \_\_\_\_\_ has applied to, received and accepted from the United States Department of Commerce, Economic Development Administration (EDA), whose address is \_\_\_\_\_ a grant in the amount of \_\_\_\_\_ and No/100 Dollars (\$ \_\_\_\_\_) (Grant Amount) pursuant to a Grant Agreement entered into by the parties on \_\_\_\_\_, and bearing EDA Project Number \_\_\_\_\_ (the Project); and

WHEREAS, pursuant to the application filed by Mortgagor requesting said grant and pursuant to the Grant Agreement, the Grant Amount is to be used for the purpose of making improvements consisting of \_\_\_\_\_ on the real Property described in Exhibit "A," attached hereto and made a part hereof (the Property); and

WHEREAS, any transfer or conveyance of a Project by an EDA Grantee must have the prior written approval of EDA. However, EDA, under authority of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. Section 3121, is not authorized to permit transfer or conveyance of a Project to parties which are not eligible to receive EDA grants unless EDA is repaid its share of the fair market value of the Project or unless the authorized purpose of the EDA grant was to develop land in order to lease it for a specific use, in which case EDA may authorize a lease of the Project if certain conditions are met; and

WHEREAS, the aforesaid grant from EDA provides that the authorized purpose for which the Grant Amount may be used is to develop and improve the Property in order to lease it for a specific use while further providing, *inter alia*, that Mortgagor will not sell, mortgage, or otherwise use or alienate any right to, or interest in the Property, other than by a lease permitted by the Grant Agreement, or use the Property for purposes other than and different from those purposes set forth in the Grant Agreement and the application made by Mortgagor therefor, such alienation or use being prohibited by 13 CFR Part 314, or by 15 CFR Part 24 or by Office of Management and Budget Circular A-110, Attachment N (the OMB Circular); and

WHEREAS, the value of EDA's right to repayment under the terms of 15 CFR Part 24 and OMB Circular A-110 is difficult to establish; and

WHEREAS, at this time, Mortgagor and EDA desire to establish a value for EDA's share of the Project in the event that the Property is used, transferred or alienated in violation of the Grant Agreement, 15 CFR Part 24, OMB Circular A-110 or 13 CFR Part 314;

NOW THEREFORE, Mortgagor does hereby mortgage, warrant, grant and convey unto EDA, its successors and assigns, a mortgage on said Property to secure a debt that shall become due and payable by Mortgagor to EDA upon the use, transfer or alienation of the Property in violation of the Grant Agreement or in violation of the regulations set forth in 13 CFR Part 314, 15 CFR Part 24, or OMB Circular A-110, as such Grant Agreement, regulations or Circular may be amended from time to time, provided, however, that the lien and encumbrance of this AGREEMENT AND MORTGAGE shall terminate and be of no further force and effect \_\_\_\_\_ years from the date hereof, which period of years has been established as the useful life of the improvements to the Property. The amount of the lien, encumbrance and debt created by this Agreement shall be the Grant Amount or the amount actually disbursed or an amount determined pursuant to 13 CFR Part 314. Mortgagor does hereby acknowledge that said debt shall accrue and be due and payable upon any use, transfer, or alienation prohibited by the Grant Agreement, 15 CFR Part 24, OMB Circular A-110, or 13 CFR Part 314, and does, moreover, agree that such debt shall be extinguished only through the full payment thereof to the United States.

Mortgagor further covenants and agrees as follows:

## 1. Lease of Property:

If the Grant Application and Grant Agreement authorize Mortgagor to lease the Property, all lease arrangements must be consistent with the authorized general and special purpose of the grant; said lease arrangements will provide adequate employment and economic benefits for the area in which the Property is located; said lease arrangements must be consistent with EDA policies concerning, but not limited to, nondiscrimination and environmental requirements, and that the proposed Lessee is providing adequate compensation to Mortgagor for said lease. Any lease agreements entered into by Mortgagor of the Property shall be subordinate, junior and inferior to this AGREEMENT AND MORTGAGE.

## 2. Charges; Liens:

Mortgagor shall protect the title and possession of the Property, pay when due all taxes, assessments, and other charges, fines and impositions now existing or hereafter levied or assessed upon the Property and preserve and maintain the priority of the lien hereby created on the Property including any improvements hereafter made a part of the realty.

## 3. Hazard Insurance:

Mortgagor shall insure and keep insured all improvements now or hereafter created upon the Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said improvements. Any insurance proceeds received by Mortgagor due to loss shall be applied to restoration or repair of the Property damaged, provided such restoration

or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate EDA for its fair share. EDA's fair share shall be a percentage of said insurance proceeds equal to its grant percentage in the total cost of the grant program for which the damaged or destroyed real property was acquired or improved.

## 4. Preservation and Maintenance of the Property:

Mortgagor shall keep the Property in good condition and repair and shall not permit or commit any waste, impairment, or deterioration of the Property.

## 5. Inspection:

EDA may make or cause to be made reasonable entries upon and inspection of the Property.

## 6. Condemnation:

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate EDA for its fair share. EDA's fair share shall be a percentage in the total cost of the grant program for which the condemned property was acquired or improved.

## 7. Forbearance by EDA Not a Waiver:

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise affordable by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder.

## 8. Recording of Mortgage—Mortgagee's Copy:

Mortgagor shall record this AGREEMENT AND MORTGAGE in the County where the Property is located, thereby securing to EDA an estate in the Property. Mortgagee shall be furnished a confirmed copy of this Mortgage at the time of execution, and after recordation thereof.

## 9. Remedies Cumulative:

All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

## 10. Notice:

Any notice from EDA to Mortgagor provided for in this Mortgage shall be mailed by certified mail to Mortgagor's last known address or at such address as Mortgagor may designate to EDA by certified mail to EDA's address, except for any Notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage.

11. Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this AGREEMENT AND MORTGAGE, EDA, its designees, successors or assigns may declare the entire indebtedness secured hereby immediately due, payable and collectible. This AGREEMENT AND MORTGAGE may be enforced by the Secretary of Commerce of the United States of America, the Assistant

Secretary of Commerce for Economic Development or their designees, successors or assigns, by and through a foreclosure action brought either in a United States District Court, or in any State Court having jurisdiction, but such action shall not be deemed to be a waiver of the aforesaid debt or of any possible further or additional action to recover repayment thereof.

After any breach on the part of Mortgagor, EDA, its designees, successors or assigns shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Mortgage, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property, and with such other powers as may be deemed necessary.

#### 12. Governing Law; Severability:

This AGREEMENT AND MORTGAGE shall be governed by applicable Federal law and nothing contained herein shall be construed to limit the rights the EDA, its designees, successors or assigns is entitled to under applicable Federal law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

IN WITNESS WHEREOF, Mortgagor has hereunto set its hand and seal on this the \_\_\_\_\_ day of \_\_\_\_\_ 19, \_\_\_\_\_.

WITNESS:

By: \_\_\_\_\_  
Mortgagor  
Its: \_\_\_\_\_  
STATE OF

#### COUNTY OF

The foregoing instrument was acknowledged before me, a Notary Public in and for said County and State, this day of \_\_\_\_\_ 19\_\_\_\_\_, by the \_\_\_\_\_ on behalf of said

Notary Public

My commission expires \_\_\_\_\_

#### **Notice of Requirements for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246 and 41 CFR Part 60-4)**

The following notice shall be included in, and shall be a part of all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000.

The Offerer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation for each trade
	* Insert goals for each year.	* Insert goals for each year.

\* Goals to be furnished by EDA.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41

CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed.

The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the appropriate Regional Office of the Office of Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

As used in this notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical area where the contract is to be performed giving the state, county and city, if any).

BILLING CODE 3510-24-P

**ADVERTISEMENT FOR BIDS**

---

Owner

---

Address  

---

Separate sealed BIDS for the construction of (briefly describe nature, scope, and major elements of the work) \_\_\_\_\_

\_\_\_\_\_ will be received by \_\_\_\_\_  
at the office of \_\_\_\_\_  
until \_\_\_\_\_, (Standard Time -- Daylight Savings Time) \_\_\_\_\_,  
19\_\_\_\_, and then at said office publicly opened and read aloud.

The CONTRACT DOCUMENTS may be examined at the following locations:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Copies of the CONTRACT DOCUMENTS may be obtained at the office of \_\_\_\_\_  
\_\_\_\_\_ located at \_\_\_\_\_  
upon payment of \$ \_\_\_\_\_ for each set.

Any BIDDER, upon returning the CONTRACT DOCUMENTS promptly and in good condition, will be refunded his payment, and any non-bidder upon so returning the CONTRACT DOCUMENTS will be refunded \$ \_\_\_\_\_.

---

Date

---

Exhibit F-1



**Information for Bidders**

BIDS will be received by \_\_\_\_\_ (herein called the "OWNER"), at \_\_\_\_\_ until \_\_\_\_\_, 19\_\_\_\_, and then at said office publicly opened and read aloud.

Each BID must be submitted in a sealed envelope, addressed to \_\_\_\_\_ at \_\_\_\_\_. Each sealed envelope containing a BID must be plainly marked on the outside as BID for \_\_\_\_\_ and the envelope should bear on the outside the name of the BIDDER, his address, his license number if applicable and the name of the project for which the BID is submitted. If forwarded by mail, the sealed envelope containing the BID must be enclosed in another envelope addressed to the OWNER at \_\_\_\_\_.

All BIDS must be made on the required BID form. All blank spaces for BID prices must be filled in, in ink or typewritten, and the BID form must be fully completed and executed when submitted. Only one copy of the BID form is required.

The OWNER may waive any informalities or minor defects or reject any and all BIDS. Any BID may be withdrawn prior to the above scheduled time for the opening of BIDS or authorized postponement thereof. Any BID received after the time and date specified shall not be considered. No BIDDER may withdraw a BID within 60 days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the OWNER and the BIDDER.

BIDDERS must satisfy themselves of the accuracy of the estimated quantities in the BID Schedule by examination of the site and a review of the drawings and specifications including ADDENDA. After BIDS have been submitted, the BIDDER shall not assert that there was a misunderstanding concerning the quantities of WORK or of the nature of the WORK to be done.

The OWNER shall provide to BIDDERS prior to BIDDING, all information which is pertinent to, and delineates and describes, the land owned and rights-of-way acquired or to be acquired.

The CONTRACT DOCUMENTS contain the provisions required for the construction of the PROJECT. Information obtained from an officer, agent, or employee of the OWNER or any other person shall not affect the risks or obligations assumed by the CONTRACTOR or relieve him from fulfilling any of the conditions of the contract.

Each BID must be accompanied by a BID bond payable to the OWNER for five percent of the total amount of the BID. As soon as the BID prices have been compared, the OWNER will return the BONDS of all except the three lowest responsible BIDDERS. When the Agreement is executed the bonds of the two remaining unsuccessful BIDDERS will be returned. The BID BOND of the successful BIDDER will be retained until the payment BOND and performance BOND have been

executed and approved, after which it will be returned. A certified check may be used in lieu of a BID BOND.

A performance BOND and a payment BOND, each in the amount of 100 percent of the CONTRACT PRICE, with a corporate surety approved by the OWNER, will be required for the faithful performance of the contract.

Attorneys-in-fact who sign BID BONDS or payment BONDS and performance BONDS must file with each BOND a certified and effective dated copy of their power of attorney.

The party to whom the contract is awarded will be required to execute the Agreement and obtain the performance BOND and payment BOND within ten (10) calendar days from the date when the NOTICE OF AWARD is delivered to the BIDDER. The NOTICE OF AWARD shall be accompanied by the necessary Agreement and BOND forms. In case of failure of the BIDDER to execute the Agreement, the OWNER may at his option consider the BIDDER in default, in which case the BID BOND accompanying the proposal shall become the property of the OWNER.

The OWNER within ten (10) days of receipt of acceptable performance BOND, payment BOND, and Agreement signed by the party to whom the Agreement was awarded shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the OWNER not execute the Agreement within such period, the BIDDER may by WRITTEN NOTICE withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the OWNER.

The NOTICE TO PROCEED shall be issued within ten (10) days of the execution of the Agreement by the OWNER. Should there be reasons why the NOTICE TO PROCEED cannot be issued within such period, the time may be extended by mutual agreement between the OWNER and the CONTRACTOR. If the NOTICE TO PROCEED has not been issued within the ten (10) day period or within the period mutually agreed upon, the CONTRACTOR may terminate the Agreement without further liability on the part of either party.

The OWNER may make such investigations as he deems necessary to determine the ability of the BIDDER to perform the WORK, and the BIDDER shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any BID if the evidence submitted by, or investigation of, such BIDDER fails to satisfy the OWNER that such BIDDER is properly qualified to carry out the obligations of the Agreement and to complete the WORK contemplated therein.

A conditional or qualified BID will not be accepted.

Award will be made to the lowest responsible BIDDER.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the PROJECT shall apply to the contract throughout.

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to his BID.

Further, the BIDDER agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provisions of the equal opportunity clause set forth in the SUPPLEMENTAL GENERAL CONDITIONS.

The low BIDDER shall supply the names and addresses of major material SUPPLIERS and SUBCONTRACTORS when requested to do so by the OWNER.

Inspection trips, for prospective BIDDERS will leave from the office of the

The ENGINEER is \_\_\_\_\_. His address is \_\_\_\_\_.

**Bid**

Proposal of \_\_\_\_\_ (hereinafter called "BIDDER"), organized and existing under the laws of the State of \_\_\_\_\_ doing business as \_\_\_\_\_.\*

To the \_\_\_\_\_ (hereinafter called "OWNER").

In compliance with your Advertisement for Bids, BIDDER hereby proposes to perform all WORK for the construction of \_\_\_\_\_ in strict accordance with the CONTRACT DOCUMENTS, within the time set forth therein, and at the prices stated below.

By submission of this BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to his own organization, that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in the NOTICE TO PROCEED and to fully complete the PROJECT within \_\_\_\_\_ consecutive calendar days thereafter. BIDDER further agrees to pay as liquidated damages, the sum of \$ \_\_\_\_\_ for each consecutive calendar day thereafter as provided in section 15 of the General Conditions.

BIDDER acknowledges receipt of the following ADDENDUM:

BILLING CODE 3510-24-P

\* Insert "a corporation", "a partnership", or "an individual as applicable."

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit prices or lump sum:

**BID SCHEDULE**

NOTE: BIDS shall include sales tax and all other applicable taxes and fees.

NO.	ITEM	UNIT	UNIT PRICE	AMOUNT	TOTAL PRICE
-----	------	------	------------	--------	-------------

TOTAL OF BID .....\$ \_\_\_\_\_  
LUMP SUM PRICE (if applicable) .....\$ \_\_\_\_\_

Respectfully submitted:

_____ Signature	_____ Address
_____ Title	_____ Date
_____ License Number (if applicable)	

(SEAL -- if bid is a corporation)

Attest \_\_\_\_\_